

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 29th April, 2015

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

APPROVAL BY THE NATIONAL ASSEMBLY OF SENATE AMENDMENTS TO THE PUBLIC SERVICE VALUES AND PRINCIPLES BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2014) AND THE PUBLIC PROCUREMENT AND ASSETS DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2013)

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, this is a Communication of approval by the National Assembly of the Senate amendments to the Public Service Values and Principles Bill otherwise referred to as the National Assembly Bill No. 29 of 2014 and the Public Procurement and Assets Disposal (Amendment) Bill otherwise referred to as the National Assembly Bill No. 31 of 2013.

As you may be aware, the Public Service Values and Principles Bill otherwise referred to as the National Assembly Bill No. 29 of 2014 and the Public Procurement and Assets Disposal (Amendment) Bill otherwise referred to as the National Assembly Bill No. 31 of 2013, were published in the Kenya *Gazette* Supplements No. 112 of 25th July, 2014 and 139 of 18th October, 2013 respectively, as Bills originating from the National Assembly. The Bills were passed with amendments by the National Assembly on 26th November, 2014 and 23rd April, 2014 respectively, and subsequently referred to the Senate. The Bills were read the first time in the Senate on 11th February, 2015 and 4th June, 2014 respectively and later passed with amendments on Wednesday, 1st April, 2015 and 25th November, 2014 respectively.

Hon. Senators, after the passage of the Bills by the Senate, and pursuant to Article 110(4) of the Constitution, and the provision of Standing Orders No. 20(2), and 149 of the Senate Standing Orders, I forwarded to the National Assembly, certified copies of the Public Service Values and Principles Bill otherwise referred to as the National Assembly Bill No. 29 of 2014 and the Public Procurement and Asset Disposal (Amendment) Bill,

otherwise referred to as the National Assembly Bill No. 31 of 2013, as amended by the Senate together with a Message requesting the concurrence of the National Assembly.

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3), the Clerk has delivered to me correspondence from the National Assembly regarding the approval by the National Assembly of all amendments by the Senate to the Public Service Values and Principles Bill and the Public Procurement and Assets Disposal (Amendment) Bill respectively. The Bills with the Senate amendments incorporated will be finalized and forwarded to His Excellency the President for assent.

Thank you.

MESSAGE FROM THE NATIONAL ASSEMBLY

REJECTION OF SENATE AMENDMENTS TO THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (AMENDMENT) BILL

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, this is a Message from the National Assembly on the rejection by the Assembly of some of the Senate amendments to the Environmental Management and Coordination (Amendment) Bill otherwise referred to as the National Assembly Bill No. 31 of 2014.

I wish to report to the Senate that pursuant to Standing Order No. 40 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the rejection by the Assembly of some of the Senate amendments to the Environmental Management and Coordination (Amendment) Bill otherwise referred to as the National Assembly Bill No. 31 of 2014. Pursuant to the provisions of Standing Orders No.41 and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

Whereas the Environmental Management Coordination (Amendment) Bill otherwise referred to as the National Assembly Bill No. 31 of 2014, a Bill concerning county Governments was published vide the Kenya *Gazette* Supplement No.114 of 25th July, 2014, and thereafter considered and passed by the National Assembly on 4th December, 2014.

Whereas the Senate amendments to the said Bill were received on 15th April, 2015 for consideration by the National Assembly, and whereas by a resolution, the National Assembly on Tuesday 23rd April, 2015 rejected the Senate's amendments on Clauses 10, 20, 23 and 25 of the said Bill.

Now therefore, in accordance with the provisions of Article 112(1)(a), of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly, the consequence of which the Bill stands referred to a mediation committee.

Hon. Senators, Article 112(1)(b) of the Constitution provides:-

"If one House passes an ordinary Bill concerning counties, and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration."

Further, Article 112(2)(b) of the Constitution provides that:-

“If, after the originating House has reconsidered a Bill referred back to it under Clause (1) (b), that House rejects the Bill as amended, the Bill shall be referred to a mediation committee under Article 113.”

For the benefit of Senators, Article 113 provides as follows:-

(1) If a Bill is referred to a mediation committee under Article 112, the Speakers of both Houses shall appoint a mediation committee consisting of equal numbers of Members of each House to attempt to develop a version of the Bill that both Houses will pass.

(2) If the mediation committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill.

(3) If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent.

(4) If the mediation committee fails to agree on a version of the Bill within thirty days, or if a version proposed by the committee is rejected by either House, the Bill is defeated.

Hon. Senators, in the circumstances, I concur with the Speaker of the National Assembly to form a mediation committee in accordance with Articles 112(2)(b) and 113 of the Constitution. In this regard, I have received communication from the National Assembly that the Speaker has appointed the following Members to represent the Assembly in the mediation committee that will attempt to develop a version of the Bill that both Houses will pass.

- (i) Hon. Amina Abdalla, MP;
- (ii) Hon. Ronald Tonui, MP; and,
- (iii) Hon. Mwakale William Kamoti, MP.

Similarly, I am consulting the Senate Majority and Minority Leaders with a view of appointing three Senators to represent the Senate in the mediation committee.

Next is a statement by Dr. Khalwale. Where is the Chairperson of the Committee on Legal Affairs and Human Rights?

Sen. Abdirahman: On a point of order, Mr. Temporary Speaker, Sir. I thank you for allowing me to rise on a point of order on a matter that is very sensitive regarding the debate of yesterday on the Motion of Adjournment concerning security in this country.

The Temporary Speaker (Sen. (Dr.) Machage): Give me a minute to know why the Chairman is not disposing of his statement.

Sen. Sang: Mr. Temporary Speaker, Sir, before I respond to the statement, I request that you grant me your indulgence. There are some two papers that I am supposed to lay on the Table of the House. However, there were some delays caused by the secretariat. I now have the papers.

The Temporary Speaker (Sen. (Dr.) Machage): Permission granted but do not make it a habit.

PAPERS LAID**DRAFT KENYA INFORMATION AND COMMUNICATIONS
REGISTRATION OF SIM CARDS REGULATIONS, 2015**

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to lay the following Papers on the Table:-

The Draft Kenya Information and Communications Registration of Sim Cards Regulation, 2015.

THE BASIC EDUCATION REGULATIONS, 2015

The Basic Education Regulations, 2015

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

STATEMENTS

The Temporary Speaker (Sen. (Dr.) Machage): Go on with your statement.

**COLLAPSE OF MUMIAS SUGAR COMPANY
IN KAKAMEGA COUNTY**

Sen. Sang: Mr. Temporary Speaker, Sir, I appreciate the fact that we undertook to respond to this statement today. However, we had challenges receiving a response from the relevant Government Ministry and that is the Attorney General's Office.

The Chairman of the Committee, Sen. Amos Wako, undertook to follow it up in person but he is not in. Would I be in order to request that we do all that we can to ensure that we respond by Tuesday next week?

The Temporary Speaker (Sen. (Dr.) Machage): Where is the questioner? I see no objection. Let it be done.

STATE OF SECURITY IN PARLIAMENT AND UNIVERSITIES

Sen. Abdirahman: Thank you, Mr. Temporary Speaker, Sir. I stand on a point of order regarding the Adjournment Motion that was discussed yesterday and with specific reference to contributions made by Dr. Khalwale on the insecurity situation in our institutions. I am appalled by the abuse of the Parliamentary privileges and immunities. I also think that the statements---

The Temporary Speaker (Sen. (Dr.) Machage): Could you quote the Standing Order on which you are standing?

Sen. Abdirahman: I stand on Standing Order No.94. I will read it if you allow me.

“A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.”

Looking at the HANSARD, Senator Khalwale is expected to substantiate today those matters. I want to point out the issues that are laid here which he spoke about. I also want to specifically express how touched we are because of the reckless and irresponsible statements that we can clearly read here.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Let me caution you. If you have to discuss the character of a Senator, then you must rise on a substantive Motion.

Sen. Abdiraham: Mr. Temporary Speaker, Sir, I am not discussing the character. I was talking about the statements. I am not discussing him individually. I am saying that such statements can be reckless.

Sen. Okong'o: On a point of order, Mr. Temporary Speaker, Sir. I am wondering whether my friend, Sen. Hassan, is in order to speak on a matter that was raised by a Senator who is not in the House currently. If need be, he would be required to respond.

Sen. Khaniri: On a point of order, Mr. Temporary Speaker, Sir. The Senate Deputy Minority Leader rose under Standing Order No.94 which says:-

“A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.”

If I may recall, while Sen. (Dr.) Khalwale was on the Floor, he was challenged about the same issues that the Senate Deputy Minority Leader raised and I think that he made a promise to come to the House and substantiate the issues that he had raised. Will I be in order to request that the Senate Deputy Minority Leader holds his horses until the Senator for Kakamega makes his substantiation before we can raise any issues on this matter?

Sen. Billow: Mr. Temporary Speaker, Sir, you are mandated to deal with some issues under Standing Order No.1, and this is in addition to what my colleague, Sen. Hassan, said. I think that it is about a matter that was debated in the House, which is of public interest and touches some of us very much, that we want to discuss it as a matter of urgency. It is not about the character of the said Senator, whether he is in or not. The issue is about a community, society and individual Senators. We need to have an opportunity and you have the powers, under Standing Order No.1, to allow us to express our comments and let Members contribute to it if they deem fit.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Senator! The rule of justice must prevail in the House. It is only fair that we give a few more minutes to see whether Sen. (Dr.) Khalwale will avail himself to reply to the request of substantiation that was raised yesterday. You have quoted Standing Order No. 94. I will refer you to Standing Order No. 94(2). I can only make a decision after hearing the sort of substantiation that will be laid before this House by the so named Senator. I am tied by the rules of this House. I will not jump to Standing Order No.1 as yet, which gives me the latitude to make certain decisions. I think that it will be fair for Sen. Abdirahman to wait a little for Sen. Khalwale to listen to the Standing Order that applies directly on his

allegations. Otherwise, Sen. (Dr.) Khalwale may come and not respond to his request and that will be another issue in the House. Please hold on.

Sen. Abdirahman: Mr. Temporary Speaker, Sir, I respect your ruling on this matter, but the substantiation that he is expected to bring only deals with half of it. We must express our thoughts on this matter.

The Temporary Speaker (Sen. (Dr.) Machage): I understand your feelings on this matter. I am equally disturbed---

Sen. Abdirahman: Mr. Temporary Speaker, Sir, we should be given time to ---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Abdirahman! I cannot speak as you speak.

Sen. Abdirahman: Mr. Temporary Speaker, Sir, I accept. I will hold my horses.

Sen. Billow: Mr. Temporary Speaker, Sir, I accept your ruling, but it is about the conduct of business in the House. This is a House that is watched by all Kenyans. The statements that we make in this House can have a significant impact on the lives of the people of this country. So, when statements have been made and this House does not challenge them and it goes on the record of this House, the HANSARD, I think that it is incumbent upon us, as the leaders of this country, to raise these issues and discuss them. I agree with Sen. Hassan that it is not about the specific information that he has to substantiate within 48 hours, which he can bring later. I think that it is important to look at some of the things that are in the HANSARD which ought not to have been allowed by the Speaker of this House at the time the debate was going on.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Billow! As you concluded your Standing Order request, you moved into an area that you should not; doubting the judgment and decision of the Speaker of this House. You know the rules because you are a seasoned politician and Member of Parliament. If you do not accept what the Speaker has ruled in this House, there are procedures. So, I rule you out of order for that. However, I have listened to your other feelings.

I know what Sen. Khalwale said yesterday. It is the property of this House and it is in the HANSARD. However, it is just fair that I give a few more minutes to see whether Sen. (Dr.) Khalwale will be in the House. If he does not appear, I will make a decision. It may be pro or against you or demand that he appears by force in this House at a later date.

Is there any other matter?

Please, proceed, Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I think you have ruled well. We were here yesterday and some of our colleagues were not here. They might not have read the HANSARD to the last point. It is best that we wait for Sen. (Dr.) Khalwale to come because the Chair ordered yesterday that he substantiates.

The Temporary Speaker (Sen. (Dr.) Machage): Are there any other Statements or requests for Statements?

Please, proceed, Sen. (Prof.) Lesan.

SEIZURE OF KENYAN IVORY IN THAILAND

Sen. (Prof.) Lesan: Thank you, Mr. Temporary Speaker, Sir. Pursuant to Standing Order No. 45(2)(b), I wish to seek a Statement from the Chairperson of the Committee on Agriculture, Livestock and Fisheries regarding the recent seizure, by Thai customs officials, of 511 pieces of elephant ivory in a consignment disguised as tea leaves from Kenya on 28th April, 2015. In the Statement, the Chairman should address the following issues:-

(1) Does Kenya currently export tea to the Kingdom of Thailand, Laos or any other country in the Far East?

(2) Could the Chairperson explain the circumstances under which over 500 pieces of elephant ivory were found hidden in tea sacks containing Kenyan tea leaves by Thailand officials on 28th April, 2015?

(3) Could the Chairperson provide all the details regarding the consignment and clarify whether it was actually from Kenya, considering that the same was found hidden in tea leaves sacks allegedly from Kenya? If so, were necessary levies such as *ad valorem* paid to the Kenya Revenue Authority (KRA) in respect of the consignment?

(4) Were the Kenya Tea Development Agency (KTDA) godowns in Mombasa, which provide storage for tea in transit, used to store the particular consignment of ivory?

(5) What is the role of the East African Tea Traders Association (EATTA) in the export of tea in the light of the finding of ivory and any other contraband amongst the Kenyan tea?

(6) What measures are in place to ensure that KTDA and EATTA are held to account regarding the credibility of the tea products and the tea industry in general?

Thank you, Mr. Temporary Speaker, Sir.

Sen. Ndiema: Mr. Temporary Speaker, Sir, we seek indulgence to reply within two weeks.

The Temporary Speaker (Sen. (Dr.) Machage): So it will be.
Next order, please.

MOTION

ADOPTION OF FINANCE COMMITTEE REPORT ON THE MATTER OF CEILINGS
ON RECURRENT EXPENDITURE FOR COUNTY GOVERNMENTS
FOR FY 2014/2015

(Sen. Billow on 1.4.2015)

*(Resumption of Debate interrupted on 2.4.2015
– Morning Sitting)*

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, to my recollection, there is supposed to be a division on this Motion. Could the whips advise if we are adequate for that purpose? Could the Chairperson approach the Chair?

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Let the Division Bell be rung for two minutes.

(The Division Bell was rung)

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

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Bule! Could you go back to the Bar and bow? I will allow you to go back, cross and bow.

(Sen. Bule went back and bowed to the Chair)

Very well, you can now decide where you want to go.
I will therefore put the Question.

Can you draw the bar and close the doors? You can now log in. You have 15 seconds to log in.

Vote now. For those who need assistance, please, come forward.

(Voting in progress)

DIVISION

ELECTRONIC VOTING

(Question that the House adopts the report on the matter of ceilings on Recurrent expenditure for county governments for the financial year 2014/2015 put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana-River County; Sen. Chelule, Nakuru County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Khaniri, Vihiga County; Sen. Kisasa, Kilifi County; Sen. Kittony, Trans-Nzoia County; Sen. Kutu, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Musila, Kitui County; Sen. Ndiema, Trans Nzoia County; Sen. Anyang'-Nyong'o, Kisumu County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County and Sen. Sijeny, Nairobi County.

AYES: Nil

(Loud consultations)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Hon. Senators! When the Speaker is on his feet, you shut up. I would like to announce the results of the Division.

AYES: 24

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

NOES: NIL

ABSTENTIONS: NIL

(Question carried by 24 votes to nil)

The Temporary Speaker (Sen. (Dr.) Machage): Open the doors and draw the Bar.

COMMUNICATION FROM THE CHAIR

SEN. KHALWALE TO PROVIDE SUBSTANTIATION FOR ALLEGATIONS MADE WITHIN 48 HOURS

Hon. Members, before we go to the Committee of the Whole, I have gotten a copy of the HANSARD report of yesterday. There was a ruling I was to make and I think it is time I made the ruling.

After Sen. (Dr.) Khalwale made his remarks, the Deputy Speaker who was on the Chair said: “You see, Sen. (Dr.) Khalwale, normal practice is that when a challenge like that one comes, you should be able to substantiate immediately. Is that right?”

The Deputy Speaker said: “I did not ask you to sit. Are you undertaking to table that information tomorrow morning?”

Sen. (Dr.) Khalwale said: “Yes Mr. Deputy Speaker, Sir, at the next sitting I will table it because according to the Standing Orders, I can table them within 48 hours.

The Deputy Speaker said: “I am asking you for the HANSARD record that you are giving that undertaking.

Sen. (Dr.) Khalwale said: “Yes, I am giving that undertaking and I will go to the Office of the Clerk to get it.

The Deputy Speaker said: “Failure to which I will require you to withdraw and apologise.

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

The Deputy Speaker said: “It is so ordered. Proceed.”

Hon. Senators, I will give Sen. (Dr.) Khalwale until tomorrow. The 48 hours are not yet over. We just have to have justice for everybody. If he will either not substantiate or not appear in this House, then he will be ruled disorderly and somebody will be at liberty to name him.

Thank you.

So, let us now go to the Committee of the Whole.

(Hon. Senators stood in their places)

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

The Temporary Speaker (Sen. (Dr.) Machage): Order! Order, Sen. Hassan!

Hon. Senators, I request that you do not go out. We were 24 in the last Division. If anybody, even one Member, goes away, we will be in trouble. So, pass that message to the other Members at the lounge.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

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

The Temporary Chairperson (Sen. (Dr.) Machage): Hon. Members, I will alter what you have known to be the procedure so as to help conserve time. We will hold all questions even for the clauses that have no amendments until at a time that I will tell you to vote.

Clause 4

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

The Temporary Chairperson (Sen. (Dr.) Machage): Clause 4 has no amendments. If you have any amendment, wait until I read a clause that you have an amendment on. When I read it, stand with the amendment.

Clause 5

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

THAT, Clause 5 of the Bill be amended in paragraph (e) by-

(a) deleting the words 'license importers of alcoholic drinks and' appearing in the proposed new paragraph (eb); and

(b) inserting the following new paragraph immediately after the proposed new paragraph (ef) -

(eg) publish annually in at least one newspaper of national circulation and on the Authority's website an up to date list of all approved alcoholic drinks and the active ingredients used in the manufacture of such drinks.

The reason is that this conflicts with the mandate of the National Authority for the Campaign against Alcohol and Drug Abuse (NACADA).

Thank you, Mr. Temporary Chairman.

The Temporary Chairperson (Sen. (Dr.) Machage): If that is the only reason, very well. I now propose the question since I see no other intervention.

(Question of the amendment proposed)

(Question, that clauses 6 and 7 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): What is it Sen. Adan? Could you say it loudly?

Sen. Adan: Mr. Temporary Chairman, I am sorry to take you back. The Committee also wishes to introduce a requirement for NACADA to publish annually in at least---

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Sen. Adan. When I told you to say a little bit more on Clause 5, you should have said it at that time. The rules of the House dictate that I rule you out of order. You have been overtaken by events. Therefore, keep quiet and never talk about it again.

Clause 8

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, clause 8 of the Bill be amended by –

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

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

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

The Temporary Chairperson (Sen. (Dr.) Machage): Could you explain a little?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Chairman, one of the reasons why I want this clause amended is to improve industrialisation and backward linkages in the alcoholic industry. We need to promote the use of local raw materials in the manufacture of alcohol.

Mr. Temporary Chairman, you know that if alcohol is not properly manufactured, it can be a poisonous substance. Therefore, it is important that scientific research be done so that when local raw material is incorporated in the manufacture of alcohol, it meets proper hygienic and international standards.

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. I will then propose the question.

(Question of the amendment proposed)

*(Question, that Clauses 9, 10, 11, 12, 13, 14 and 15
be part of the Bill proposed)*

The Temporary Chairperson (Sen. (Dr.) Machage): I see no intervention. Next clause.

Clause 16

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

THAT, Clause 16 of the Bill be amended –

(a) by deleting paragraph (b) and substituting therefor the following new paragraph-
(b) in subsection (1) by deleting paragraph (c) and substituting therefor the following new paragraph –

(c) that where the premises in respect of which the application is made are located at least three hundred metres from any nursery, primary, secondary or other learning institution for persons under the age of eighteen years in those premises do not-

(i) interfere with learning in the institution; or

(ii) encourage, expose or promote the consumption of alcohol to persons enrolled in the institution.

(b) by inserting the following new paragraph immediately after paragraph (b)-

(c) by inserting the following new subsection immediately after subsection (2) –

(3) The County Committee shall not grant a licence for the sale of an alcoholic drink to be consumed on the premises unless the applicant has taken measures to sound-proof the premises.

The reason is that the Committee noted that there will be practical challenges in implementing the proposal. The Committee, therefore, proposes that the clause be amended so as to give county committees discretion in deciding whether premises that sell alcohol should be established within 300 metres of the learning institutions after considering whether they could interfere with learning activities or encourage consumption of alcohol among the learners in the institution.

Further, during the stakeholders' hearing, many complaints were made about noisy pubs and discos in residential areas. To address this issue, the Committee proposes a further amendment to this clause to provide that such premises should not be licensed if the owners have not taken measures to sound-proof them.

Thank you, Mr. Temporary Chairman.

The Temporary Chairperson (Sen. (Dr.) Machage): Any other intervention? I will propose the question.

(Question of the amendment proposed)

Sen. Nabwala: Mr. Temporary Chairman, I want to comment on No. 3 which states;

“The County Committee shall not grant a licence for the sale of an alcoholic drink to be consumed on the premises unless the applicant has taken measures to sound-proof the premises.”

Mr. Temporary Chairman, the bar owners need to be given adequate time to put the sound-proof. In addition to that, some modern buildings are made of glass. So, it will

be a great challenge if we ask the bar owners to put sound-proof in the premises where walls are made of glass. Therefore, I would like No. 3 to be deleted.

The Temporary Chairperson (Sen. (Dr.) Machage): Did you say that you want a deletion? If that is the case, then you should have come with an amendment to demand for the deletion. You are out of order.

Madam Vice Chairperson, do you have anything to say?

Sen. Adan: Mr. Temporary Chairman, with all due respect to my colleague, it is very important at the initial stage that we have sound-proof walls in all pubs. I will give a very good example of where I live right now. We have a neighbour who has a restaurant. Every weekend, they play music. Therefore, you cannot license an institution much later after it has started operating. I propose that that condition be immediate before a licence is given.

Thank you, Mr. Temporary Chairman.

The Temporary Chairperson (Sen. (Dr.) Machage): Very well. I wish you had put that in your amendments so that it is part of the law. Again, that escaped your attention anyhow.

Any other intervention?

Sen. Okong'o: Mr. Temporary Chairman, I had an observation on the clause which the Vice Chairperson has just mentioned. We are talking about business persons. Talking about sound-proof premises is not a mean thing. It is a heavy investment. People who do pub businesses are small scale Kenyans. Installing sound-proof premises is a very expensive issue. The Committee and its Chairperson should reconsider that clause.

The Temporary Chairperson (Sen. (Dr.) Machage): It is not the Committee that will consider it. It is you to vote it out when the time comes if you think it is not fair. You have the mandate with your vote to cast it out.

Sen. Okong'o: Most guided, Mr. Temporary Chairman.

The Temporary Chairperson (Sen. (Dr.) Machage): Very well.

(Question, that Clauses 17, 18 and 19 be part of the Bill, proposed)

Clause 20

Sen. Adan: Mr. Temporary Chairperson, Sir, I propose that Clause 20 be deleted and substituted with the following new Clause:

20. Section 17 of the principal Act is amended –

(a) In sub-section 3 by deleting the words “the District Committee” appearing at the beginning of the sub-section and substituting therefor the words “the county committee”.

(b) By inserting the following new sub-section immediately after sub-section 3 to read:-

(3) (A) A license for the sale of an alcoholic drink to be consumed in the premises in which it is sold shall specify the maximum number of people to be admitted into the premises at any given time.

(3) (B) A person licensed to sell an alcohol drink to be consumed in the premises in which it is sold shall not at any time admit more persons than those prescribed in the license.

(3) (C) A person who contravenes sub-section 3 (b), commits an offence.

(c) By deleting sub-section 4.

Thank you.

(Question of the amendment proposed)

Sen. Nabwala: Mr. Temporary Chairperson, Sir, I would like to talk about 3 (a) where the bar owner is supposed to specify the maximum number of people to be admitted in the premises at any given time. It is difficult to count people because when you are a bar owner running a bar, people keep coming in and out. This is going to be a challenge to the bar owners.

Sen. (Eng.) Muriuki: Mr. Temporary Chairperson, Sir, my sentiments are similar to the Senator who has just spoken. The way our system runs *vis-à-vis* business people with drinking places and the police is such that if we insert a clause where it licenses a particular number of people, it is a very good avenue for police to harass the bar owners because all they need to do is to come and accuse you of having exceeded the licensed number and before they take you to court, there will be a lot of harassment. On that basis, I oppose and request the Chair to reconsider that portion of the amendment.

Sen. Okong'o: Mr. Chairperson, Sir, on the same clause 3 (C) where they mention that a person who contravenes sub-clause 3 (B) commits an offence, this is a very ambiguous. As my colleague has said, if a policeman sees a clause like this, they will want to harass those small businessmen. I think the Act should be something simple and clear.

I oppose.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairperson, Sir, I also join the distinguished Senators for Nyandarua and Nyamira and encourage my Vice Chairperson – because I am a Member of the Committee – to reconsider these clauses. First, this is a perfect highway for policemen to take bribes. All they will be doing is to raid bars and say: “You have more people than you are licensed”. Perhaps the gracious lady from her attire may not be a person who consumes alcohol. What happens is that every bar has peak hours and lean hours. So during peak hours, you will find that it has more people than probably it is necessary and it never lasts much longer than two to three hours and they go away. The police will just hang around at peak hours and then raid the bars, not for purposes of enforcing the law but for taking bribes in the manner that you know our policemen do.

Again, it is very difficult for the bar owner to every time count the number of patrons on the premises and keep away those who are coming in as people go on with their drinking activities. I want to urge you that this law may encourage corruption other than prevent crowding in places. Even drinkers themselves know that if a place is too crowded, they do not even go there.

Sen. Haji: Mr. Temporary Chairperson, Sir, I think when we were doing the public hearings, the feeling of NACADA was that, for example, if you look at our chamber, it has a certain capacity and cannot hold more than what it should hold. Similarly every bar has some capacity.

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Senator! I would really request you to desist from comparing this institution to a bar.

Sen. Haji: Mr. Temporary Speaker, Sir, let me use the example of a classroom which has a certain capacity that it cannot exceed. Even if the police raid such a drinking place and accuse you of having more people than the licensed ones, they should be allowed to count. I am sure then, there would be no corruption.

The Temporary Chairperson (Sen. (Dr.) Machage): You attempted to explain but the comparison between a bar and a classroom are two worlds apart because classrooms have a fixed number of students that have been registered for the whole year and the number can never increase, whereas I respect your views on this issue.

Sen. Adan: Mr. Temporary Chairperson, Sir, with all due respect to all my colleagues, it was the feeling of the Committee that we need to bring in this clause. I wish to confirm that when we had this discussion, the Senate Minority Leader also contributed to this particular clause.

Nevertheless, the feeling of the Committee Members was that this should be done because of security and to avoid overcrowding in the pubs, especially in the rural areas.

The Temporary Chairperson (Sen. (Dr.) Machage): It is really interesting to perceive that feeling of the Committee when some Members of the Committee are in this House opposing the same. All the same, maybe it is a matter of the definition of “feeling”.

Sen. Obure: Thank you, Mr. Temporary Chairperson, Sir. I would like to plead with the able Vice-Chair that what we are just about to introduce will be very cumbersome to implement. This is because you will appreciate that the poor bar owner out there will not have a mechanism to send away people from his place. But the patrons themselves will be able to notice that there is not enough space for them to sit and look for other bars. Let us not introduce this amendment because it will be cumbersome and cause disputes in social places. It is not necessary.

The Temporary Chairperson (Sen. (Dr.) Machage): The Vice-Chair has the discretion to either withdraw the amendment or wait for the execution of the same in whichever manner the Members will decide.

What is your decision?

Sen. Adan: Mr. Temporary Chairperson, Sir, mine is to present the views of the Committee. So, it is up to Members to either vote for or against them.

The Temporary Chairperson (Sen. (Dr.) Machage): Very well.

*(Question, that Clauses 21, 22 and 23
be part of the Bill, proposed)*

Clause 24

Sen. Adan: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT clause 24 of the Bill be deleted and substituted with the following new clause-

24. Section 24 of the principal Act is deleted.

The Temporary Chairperson (Sen. (Dr.) Machage): What was in the principal Act and why do you want to remove it? This is a sensitive Bill and so we better do proper justice to it.

Sen. Adan: Mr. Temporary Chairperson, Sir, it was the feeling of the Committee that we delete this particular clause due to the impracticalities of the implementation of the provision, such as the establishment of some of the restaurants which sell alcoholic drinks and also intend to provide eating facilities for families. If we do that, then it means that most of the families will not be able to take their children where that particular restriction is.

(Question of the amendment proposed)

*(Question, that Clauses 25, 26 and
27 be part of the Bill proposed)*

Clause 28

Sen. Adan: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT clause 28 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) by deleting paragraph (b) of subsection (2) and inserting therefor the following new paragraph-

(b) the alcoholic drink previously known as *chang'aa*, or a fortified wine or any other distilled alcoholic drink shall only be manufactured, packed, sold or distributed in glass bottles of the kind specified in paragraph (a).

Mr. Temporary Chairperson, Sir, it was proposed by NACADA and the Committee took its advice that alcohol in plastic bottles is harmful as the plastic reacts chemically with alcoholic drinks. The Committee, therefore, proposes that *chang'aa* and distilled alcoholic drinks should not be sold in plastic bottles. We feel that it should be in glass bottles.

(Question of the amendment proposed)

Sen. Okong'o: Mr. Temporary Chairperson, Sir, I am just wondering about that kind of an amendment. We are talking small-scale traders and not East African Breweries Limited or Keroche Industries. How will the provision of this amendment be effected? If you want *chang'aa* to be bottled and packaged expensively, we will not change anything. I think that this is not tenable. The Vice-Chair should reconsider this amendment. The

Committee may not have considered widely who the people involved in this kind of business are. If you ask the East African Breweries Limited to manufacture bottles, they will do that. But if you ask the villagers in Nyamira who prepare *chang'aa* to get bottles that cost around Kshs5,000, they will not afford that. Where will they get these expensive bottles?

Sen. Mugo: Mr. Temporary Chairperson, Sir, I want to support the amendment very strongly. Even though the distinguished Senator has talked about the cost of getting plastic bottles for *chang'aa*, we must put health before anything else. We know that some alcoholic drinks do not meet the required health standards. So, we should not add another dimension of danger by packing them in plastics which have been proved not fit for human consumption. We also know that the World Health Organization (WHO) is discouraging packaging of water in plastic bottles. This is because when they get heated, they may be an agent for cancer. We know that cancer cases are prevalent all over the country. Please, let us uphold health safety before profits.

Sen. Kisasa: Mr. Temporary Chairperson, Sir, I oppose that amendment. I am talking on behalf of the people of Kilifi who normally take their drinks straight from the coconut tree at a very reasonable price. Therefore, I do not think that it is going to be practical and necessary to bottle our drinks.

The Temporary Chairperson (Sen. (Dr.) Machage): It is very interesting that you drink it directly from the tree. That is your statement and I am not disputing it.

There being no other intervention, we will proceed to the next clause.

Clause 29

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

THAT, Clause 29 of the Bill be amended by---

The Temporary Chairperson (Sen. (Dr.) Machage): Do you want to amend Clause 29 or Clause 39?

Sen. Adan: Mr. Temporary Chairman, Sir, it is Clause 29.

The Temporary Chairperson Sen. (Dr.) Machage): Very well.

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

THAT clause 29 of the Bill be amended –

(a) by deleting paragraph (b) and substituting therefore the following new paragraph-

(b) by inserting the following new subsections immediately after subsection 3-

(3A) Despite subsection (3), where an alcoholic drink is packed in a can, the statement and health warning referred to in subsection (2) shall comprise not less than 30 per cent of the total surface area of the package.

(3B) The statement and health warning referred to in subsection- (2) shall consist of not less than the character and font size stipulated under paragraph (2) of the Second Schedule which shall appear on the area of the principle display panel.

(c) by inserting the following new paragraph immediately after paragraph (b)-

(ba) in subsection (4) by deleting the words “on every successive fifty packages of each brand of the alcoholic drink” appearing immediately after the words “as is possible”.

Mr. Temporary Chairperson, Sir, the Committee noted that the above rule applies to bottles but cannot apply to canned drinks because they do not have labels on them. So as not to have a gap in the law, the Committee seeks to provide that for canned drinks, the health warning should occupy at least 30 per cent of the package.

The Committee further proposes to amend subsection (4) of the Act so as to remove the onerous requirement that different health warning should appear on every fifty packages of each brand of the alcoholic drinks.

The Temporary Chairperson (Sen. (Dr.) Machage): I see no other intervention.
(*Question of the amendment proposed*)

Clause 30

Sen. Adan: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, Clause 30 of the Bill be deleted.

The justification according to the Committee is that this area is already adequately regulated under the Traffic Act.

(*Question of the amendment proposed*)

The Temporary Chairperson (Sen. (Dr.) Machage): I see no other intervention.

(*Sen. Murkomen walked out of the Chamber*)

The Temporary Chairperson (Sen. (Dr.) Machage): Sen. Murkomen and others, we will be voting for this Bill, if your request to me meant that you are going away, may I appeal that you come back.

Continue.

Clause 31

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

THAT, Clause 31 of the Bill be amended in the proposed new subsection by deleting paragraphs (a) and (b).

The Temporary Chairperson (Sen. (Dr.) Machage): What is your reason?

Sen. Adan: Mr. Temporary Chairman, Sir, we felt that as a Committee, prohibiting the sale of alcohol two days before the election will impact negatively on the businesses. We felt that this should be removed.

(Question of the amendment proposed)

Sen. Okong'o: Mr. Temporary Chairman, Sir, I am surprised. Are we talking about the security of the nation during election time or we are thinking about business? I think the Committee went there to sit and make very irrational decisions---

The Temporary Chairperson (Sen. (Dr.) Machage): Order! You have your own discretion to either agree with the Committee or oppose it.

Sen. Okong'o: Mr. Temporary Chairman, Sir, the initial law which spoke of two days of not selling alcohol cannot impact heavily on the cost to be incurred in security matters if people are drunk during the election period. People should be sober and keen to go and do their dutiful role in elections. So, I find that not very much tenable. Two days is not a very long period if people have businesses to run. I will be opposing that at the appropriate time if the Chair cannot reconsider.

The Temporary Chairperson (Sen. (Dr.) Machage): It is not for the Chair to consider but the number of votes. I see no other intervention---

Sen. Obure: Mr. Temporary Chairman, Sir, I want to differ with my friend and neighbour, I think what the Committee has recommended is correct. We cannot make the assumption that Kenyans are irresponsible and that they cannot determine how much alcohol they take and when. Therefore, for that reason, I do not think that it is necessary to close businesses and affect livelihoods of people just because we are facing elections in two days time.

The Temporary Chairperson (Sen. (Dr.) Machage): Very well, I see no other intervention.

Clause 32

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

THAT, Clause 32 be amended in subparagraph (ii) of paragraph (a) by deleting the words “ in the Fourth Schedule” or appearing immediately after the words “therefor the words”

The justification by the Committee is that we cannot list all prohibited substances in the Fourth Schedule, a better approach will be to require the Cabinet Secretary to list such substances through regulations.

(Question of the amendment proposed)

Clause 33

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

THAT, Clause 33 be amended in the proposed new subsection (1A) –

- (a) by deleting paragraph (a)
- (b) in the paragraph (b) by deleting the words “ the hours of 6.00 a.m and 10.00 p.m” appearing immediately after the words “any electronic media” and substituting therefor the words “ the hours of 6.00 a.m and 8.30 p.m”

(Question of the amendment proposed)

(Loud consultations)

The Temporary Chairperson (Sen. (Dr.) Machage): Sen. Wetangula, this is not a *kangaroo* court.

Sen. Adan: Mr. Temporary Chairman, Sir, according to the feeling of the Committee varying the hours within which alcoholic drinks should not be advertised is to be between 6.00 a.m to 8.30 p.m. instead of 6.00 a.m to 10.00 p.m., as it is expected that most children are asleep by 8.30 p.m.

I think Sen. Wetangula was also a Member of this Committee.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, Sir, I want to ask the Chairperson to reconsider---

The Temporary Chairperson (Sen. (Dr.) Machage): Order! I have not yet proposed the amendment.

(Question of the amendment proposed)

Now continue, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, Sir, we are actually overregulating. In the process of doing so, we are stifling the economy. If we say that advertisements for alcohol cannot be carried out between 6.00 a.m. and 8.30 p.m., we are assuming that from January to December, between 6.00 a.m. to 8.30 p.m., children do not do anything else, but sit watching television. I think by that time, they are in school. Two thirds of the year, children are in school. Advertisement is part and parcel of business. If we want the economy to grow, we must generate revenue. An advertisement of an alcoholic beverage *per se* does not necessarily influence a child to drink. What we need to regulate is how the advertisements are couched and how the message is sent out with disclaimers that alcohol cannot be sold to, and should not be drunk by children.

Those are the regulations that developed countries use, but you cannot just say between 6.00 a.m. and 8.30 p.m., you cannot advertise alcohol. You are actually killing the media that relies on business, employment and affecting many sectors of the economy with a law that looks unnecessarily draconian and not very reasonable. I want to urge the Chairperson to reconsider this again before we subject it to an unnecessary no vote.

Sen. (Dr.) Khalwale: Mr. Temporary Chairman, Sir, when you think about it and weigh with the experience that you have, children from Catholic families, for example---

The Temporary Chairperson (Sen. (Dr.) Machage): Did you refer to me?

Sen. (Dr.) Khalwale: By "you" I meant you as in people in here. I mean Senators in here.

(Laughter)

We know that children from permissive families; when we were in school, few of them became alcoholics. However, the ones who are protected, the moment they discover alcohol, they tend to abuse it. You are a doctor and you know that I am speaking nothing, but facts. In fact, what we should be doing is to have more of those advertisements so that during those advertisements, we demystify alcohol. We could also emphasize during the advertisement that it is meant for adults over 18 years and that drinking is harmful to your health. But if you just lock it out, it is a mystery which our youth must experiment and thanks to internet, you are not helping it in any way. This is an unnecessary amendment.

Sen. Mugo: Mr. Temporary Chairman, Sir, I support the amendment. We all know how powerful television or any media, especially electronic is. Whatever is advertised makes one who is watching it, want to have whatever that is and try it. I do not agree that that can deter. I do not know whether you read the newspapers the other day; it is a pity that school children were arrested because they were in a party drinking. They bought alcohol. When their parents came home, they found them all drunk. The neighbours called the police, who arrested the children. They were all under 20 years of age; they were 15 or 16 years old.

Knowing how powerful advertising is, we will be exposing the children to something before they are mentally capable of judging for themselves. That is why even smoking was banned because they showed university graduands smoking in campus before they graduated and they looked as if they were *wangwana*; how good it is. We should protect our children. I do not know if we should think that when you protect children from alcohol it is a draconian law. It is just jealously guarding our children.

The World Health Organisation (WHO) has a platform on advertisement of alcohol and cigarettes. If WHO is doing it, they are not doing it for the developing world. They do it, for all children of the world. Let us protect the children and not expose them to bad habits.

(Sen. Wetangula stood up in his place)

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Senators. You have already contributed on this.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairperson, Sir, allow me to---

The Temporary Chairperson (Sen. (Dr.) Machage): No, your Standing Orders do not allow me.

The Senate Minority Leader (Sen. Wetangula): In a Committee, it is allowed.

The Temporary Chairperson (Sen. (Dr.) Machage): Can you quote the Standing Order?

The Senate Minority Leader (Sen. Wetangula): Experience!

(Laughter)

The Temporary Chairperson (Sen. (Dr.) Machage): Order! I may use my own discretion to give you the permission.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, Sir, allow me to persuade the distinguished lady, Sen. Mugo. She has a point, but this may affect local television stations and radios. We have international subscription televisions. Take for example, the English Premier League, the Bundesliga, La *Liga* or *Serie A*. They are sponsored by alcohol manufacturing companies. At every interval when Manchester United is playing against Arsenal or Chelsea is playing against Liverpool, Heineken is the sponsor. These football matches are on international subscription channels, which we may not be able to control. We must pass a law that enforces what we want to do. I can assure you that advertisements are only good if they have the positive and negative effects of what you are advertising other than just saying “do not advertise.”

I want to encourage you, distinguished Chair that this is going to also adversely affect revenue collection. We all know that we must collect revenue to run Government and our activities.

Hon. Senators: Tusker FC!

The Senate Minority Leader (Sen. Wetangula): What about Tusker FC?

(Laughter)

The Temporary Chairperson (Sen. (Dr.) Machage): Very well. I see no other intervention.

The Senate Minority Leader (Sen. Wetangula): You got it.

The Temporary Chairperson (Sen. (Dr.) Machage): Yes, Sen. Mugo wants to repeat your practice which is wrong. I may not make it as a routine. I decline.

Sen. Mugo: You decline me?

The Temporary Chairperson (Sen. (Dr.) Machage): Yes, *mama*.

Hon. Senators: There are no *mamas* in this House. There are hon. Senators.

(Hon. Senators spoke off record)

The Temporary Chairperson (Sen. (Dr.) Machage): Order! I am the Chair!

(Laughter)

Next Clause.

Clauses 34

(Question, that Clause 34 be part of the Bill proposed)

The Temporary Chairperson (Sen. (Dr.) Machage): I see that there are no interventions on this Clause.

Let us move on to the next clause.

Clause 35

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

THAT, Clause 35 of the Bill be deleted.

The justification according to the committee is that this is in line with the principle of reducing the public wage bill. Clause 35 seeks to amend the Act so as to establish the Alcohol Drinks Promotion Regulation Committee. We are proposing to remove that.

(Question of the amendment proposed)

Clause 36

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

THAT, Clause 36 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)-

(c) inserting the following new subsections immediately after subsection (2) –

(3) The Cabinet Secretary shall not appoint a person as an authorized officer under this Act if the person -

(a) has, within the last five years, been convicted of an offence under this Act or any other law dealing with alcohol or drug abuse regulation and has been sentenced to a term of imprisonment exceeding six months; or

(b) is a shareholder or assignee of an outlet that sells or manufactures alcoholic drinks.

(4) A person proposed for appointment as an authorized officer under subsection (1) shall, before accepting the appointment, make a full disclosure to the Cabinet Secretary of any information under subsection (3).

The import of this is that the Committee wanted to ensure the right of the person as an authorizing officer. The Committee proposes that a person should not be appointed as an officer if within the last five years he or she has been convicted of an offence under any other law dealing with alcohol or drug abuse regulation and has been sentenced to a term of imprisonment exceeding six months. He should not also be a shareholder or an assignee of an outlet that sells or manufactures alcohol.

(Question of the amendment proposed)

Clauses 37, 38, 39, 41, 42 and 43

The Temporary Chairperson (Sen. (Dr.) Machage): I see no amendments on the Order Paper regarding these clauses.

*(Question, that Clauses 37, 38, 39, 41, 42 and 43
be part of the Bill proposed)*

Sen. Adan: Mr. Temporary Chairman, Sir, what about Clause 40?

The Temporary Chairperson (Sen. (Dr.) Machage): We have to dispose of all the amendments before we move on to the new clauses.

I order that the Division Bell be rung for two minutes. I want Senators to come in for voting.

(The Division Bell was rung)

The Temporary Chairperson (Sen. (Dr.) Machage): Order, hon. Senators. The Whips should tell us whether we have quorum to vote.

PROGRESS REPORTED

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

Sen. Adan: Mr. Temporary Chairman, Sir, pursuant to Standing Order No.139, I beg to move that the Committee of the Whole reports Progress on its consideration of the Alcohol Drink Control (Amendment) Bill (Senate Bill No.5 of 2014) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. Did you notice that when you came in and bowed, it is only Members on this side that bowed? On that side, it is only Sen. (Dr.) Khalwale who bowed. Everybody else just ignored you. Is that in order?

The Temporary Speaker (Sen. Mositet): I never saw that, hon. Senator. If at all that happened, then that is a very serious matter. Did the Senate Minority Leader also behave in the same way?

(Laughter)

What is your point of order, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I do not want to pretend to guide the Chair on how to make a ruling. However, the tradition in this House is that when this kind of misdemeanor happens, the cycle is repeated. Will I be in order to request that you ask my side to stand up and then you bow and they bow as well?

Sen. (Dr.) Machage: On a point of order, Mr. Temporary Speaker, Sir. Normally when there is any discrepancy in the House, the HANSARD is revisited. May I request that the HANSARD be revisited, to show that actually all of us bowed.

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

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, the Chairperson has gone through Order No. 9(i) and we have sought leave to report progress. We still have Order No. 9 (ii) and (iii). We seem to be leaving Order No.9 to go to No.10. I have gone through the Standing Orders and there is none that prohibits this House from seeking leave to report progress on a sub-order of an order and moving on to another sub-order from (i) to (ii). This House is guided by the Standing Orders. Standing Order No.1(2) says:-

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

Mr. Temporary Speaker, Sir, I have consulted the Clerks-at-the-Table and they say that there is no precedent to this kind of procedure. However, precedents are so because they are set. We should start by setting new precedence in our procedure. Precedents are not so because they are old. You can always set a new one. I urge that we set a new precedence; not by going to the next Order, but by going back to Committee stage.

I can see Sen. (Eng.) Muriuki and Sen. (Prof.) Anyang’-Nyong’o are here. We can go through their Bills in the Committee and then either seek leave to report progress, as the case may be, or stay them for the vote tomorrow or next Wednesday. This is so that we can be systematic and productive in an orderly manner.

I beg to move the Chair that we go back to the Committee stage, so that we can deal with suborder Nos. (ii) and (iii) in Order No. 9.

Piga makofi.

(Laughter)

The Temporary Speaker (Sen. Mositet): The Senate Minority Leader, thank you for at least what you wanted us to go through. However, I just want to remind you that we are not yet done with this Bill. We are just in the middle and the Chair of the Committee is in a position to Report on at least what has been disposed of. From there, we will continue.

The Chairman of the Committee, please, proceed to the Report.

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

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

Thank you, Mr. Temporary Speaker, Sir.

(Consideration of Report of Bill ordered for tomorrow)

The Temporary Speaker (Sen. Mositot): The Mover, please proceed.

Sen. Adan: Mr. Temporary Speaker, Sir, I have no objection. I agree with the Chairperson.

The Temporary Speaker (Sen. Mositot): You are supposed to move. You had been given a paper to read.

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

(Question proposed)

The Temporary Speaker (Sen. Mositot): What is your point of order, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, with all humility and respect to the Chair, you should have proposed the Question before you put the Question.

The Temporary Speaker (Sen. Mositot): Sen. (Dr.) Machage, I proposed the Question. I did not put the Question. The Chair was wise. You have not misadvised me.

Since there are no contributors, I will put the Question.

(Question put and agreed to)

Next Order!

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. I am at a loss on how we are proceeding. I got the impression from the ruling of the Chair that the distinguished Senator, Sen. Adan, was going to report progress, seek leave to sit again then we go back to the Committee. That is why I raised my point of order that we go to Order No.9 (ii) and (iii). However, we have now moved on to Order No.10.

Your ruling was very clear and I agreed with you that we are reporting progress on (i) then we go back in the Committee of the Whole on (ii) and (iii). I believe that is how the distinguished Senators understood you. We have now moved on to Order No.10 and abandoned Order No.9 despite your ruling. We encourage you to rescind the calling

of Order No.10 and go back to Order No.9 (ii) and (iii). The Chair has an absolute discretion to do that.

The Temporary Speaker (Sen. Mositet): Since the Chair of the Committee of the Whole has already reported and put the Question, it is just in order to move on to Order No.10.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Before we move on to the next Order, I rise to respond to the directive by the Speaker yesterday that I substantiate allegations that I had made in the House.

I would like to bring to the attention of the House that upon being directed, I took the following---

Sen. (Eng.) Muriuki: On a point of order, Mr. Temporary Speaker, Sir. Much as we are all waiting to hear what Sen. (Dr.) Khalwale would say, there was a pending matter. There is a substantive issue raised by the Senate Minority Leader. He said that we were in the Committee of the Whole and because the Standing Orders are not expressly clear, the challenge was that we should move from (i) to (ii). Therefore, your decision here will be important as to whether we can succeed or not. My view is that we should move to (ii) and proceed.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Temporary Speaker, Sir. This document is called the Order Paper and obviously there must have been some order in putting (i) to (iii). If we come to this House then ignore our Order, it does not make sense. I was just appealing that let us logically follow our Order and other Orders will follow later.

The Temporary Speaker (Sen. Mositet): I just want to remind you the Bill has been moved, seconded and we even put the Question. Automatically, it means that the Committee of the Whole, must have been disposed of. As long as the Chair has reported, it was seconded and the Question put. Therefore, we should move to Order No.10.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Temporary Speaker, Sir. We, sitting here, would not like to be oppressed by the Chair. If the Chair was reporting, she reported that we are dealing with Order No.9(i). We did not touch Order No.9(ii). We participated effectively in disposing of Order No.9(i) and we were waiting to move on to (ii) and (iii). Now to tell us that you have reported on Order No.9(i). Therefore, others have been reported on, *mutatis mutandis*, that should follow logic.

Sen. Elachi: On a point of order, Mr. Temporary Speaker, Sir. We also need clarity on Order No. 9(ii) and (iii). What happens to these items since the Movers are different?

Sen. (Dr.) Machage: On a point of order, Mr. Temporary Speaker, Sir. Would I be in order just to remind you that all you did not do was to defer part (ii) and (iii) to a different day? Otherwise, we are happy with your ruling.

The Senate Leader of Minority (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. For avoidance of doubt, Order No.9 has three limbs; we have dealt with only one limb. The progress reported was only in relation to the first limb. Therefore, we cannot say that Sen. Adan and the Chair reported progress on the whole of Order No.9. I have the impression that the Chair got my point of order when I rose for the first time. Indeed, you ruled that after reporting progress on 9(i), we are going to go back

on 9(ii) and (iii). Immediately we finished, we heard the Clerk read out Order No.10. We are saying that it is within your absolute discretion to order the rescind of the reading of Order No.10 and we go back to Order No.9(ii) and (iii).

Mr. Temporary Speaker, Sir, I want to urge you to realise the difficulties we have been having in raising enough Members in this House. So, every time we have Members in the House, particularly the sponsors of the Bills, we do as much as we possibly can and wait for the vote when we have sufficient delegations. I urge you to rescind the calling of Order No.10, we go back to Order No. 9(ii) and (iii) so that we wait for the vote when we have delegations tomorrow or next week.

Sen. (Eng.) Muriuki: On a point of order, Mr. Temporary Speaker, Sir. On the same matter, this is a challenge for this House. I am hopping the very heavy consultations with the very experienced clerk will bear fruit in the direction we wish to go. I am seeing it as a very big challenge for this House because it is not the first time that we are having an order with sub-orders, especially during the Committee Stage. When you finish the process of a sub-order, you might call it “(i).” It is actually a pragmatic move so that we do not vote when we do not have the threshold to vote, for example.

We cannot use that to deny the House the chance of going to the second order because there is no opportunity of otherwise stopping it half way other than the Committee reporting progress. Unfortunately, we do not have a word like sub-progress. I would urge you that you use your discretion to, perhaps, rescind your earlier order to go to Order No.10, and go back to Order No. 9(i) and (iii) in sequence, so that the voting itself can come another day. We can attempt to tackle these two.

The Temporary Speaker (Sen. Mositet): Hon. Senators, you realise that at least for the Order No.9 (i), we are not yet through with that one. That is why the Chair gave the progressive report. We cannot proceed to tackle (ii) if (i) is not entirely done. You know very well that we could not have done so. That is why we moved on and even put the question.

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

The Temporary Speaker (Sen. Mositet): It is quite clear now, the Senate Minority Leader. I know exactly what you are talking about, that, at least, since the Movers of the Bill are here, Sen. Prof. Anyang’-Nyong’o and the others, may be, it would have been right for us to go to (ii) and (iii). Just understand that we are not yet done with (i). Let us appreciate that and there is no way we can now say that at least we go to (ii).

Sen. (Prof.) Anyang’-Nyong’o: On a point of order, Mr. Temporary Speaker, Sir. I hope we are not becoming a House of Pharisees because, you remember, in the Bible, Pharisees are the people who used to interpret the law so legalistically that it became unreal. What I understand is that we only postponed the voting on (i) because pragmatically when we understand that we do not have numbers, we do not proceed to vote. That has been a tradition of this House and Sen. (Eng.) Karue has said it very well. The understanding was, we shall continue with (ii) and (iii) and we shall equally not vote so that next time we shall tackle Order No.9 to complete it.

I think the Clerk is giving you very bad information because he whispers in your ear, we do not know what he is talking about, but you seem to believe everything he says

and you do not believe us. It puts us in a very unequal relationship which is completely upsetting this House. I would rather we cease being Pharisees and do this thing pragmatically. We have agreed that we do not want to vote today on (i) and that is a pragmatic thing because we do not have the numbers. Equally, we have the numbers to continue debating (ii) and (iii) and leave voting alone. We can deal with the entire Order No.9 together when we have the numbers. It makes a lot of sense. The other logic that the Clerk is trying to give you, to me, is very pharisaic and will divide this House.

Thank you.

Sen. (Dr.) Khalwale: On a point of order Mr. Temporary Speaker, Sir. Allow me to be the devil's advocate. I request the Senate Minority Leader to bear with me on this one. I am basing my argument under Standing Order No.39. When we went to the Committee of the Whole under Order No.9, we were there to do business (i), (ii) and (iii). We reported back progress on the fact that the business (i), (ii) and (iii) we went to do, had found the road block that we all agreed took place. So, that brought an end to the business listed under Order No.9.

That notwithstanding, even if the argument of the Senate Minority Leader was to carry the day, it does not still take away from you, your powers under Standing Order 39(2), which I read:

“Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the Senate, direct.”

If you think for the convenience of this Senate you are directing that we move to Order No.10, you are perfectly within the standing Orders.

(Laughter)

Sen. Ndiema: On a point of order, Mr. Temporary Speaker, Sir. Actually, I was going to execute Order No.9(ii) and I was ready. However, considering that the Committee of the Whole had concluded and even sought leave to sit tomorrow, is it in order for it to seek leave to sit again today?

The Temporary Speaker (Sen. Mositet): It is not in order.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. First of all, these Standing Orders are grounded in the Constitution under Article 259 where in interpreting the Constitution and any laws developing therefrom, we must do it liberally.” Not “strictly, but liberally.”

Order No.9 that lists three Bills does not, and this we must understand – the Potato Produce and Marketing Bill (Senate Bill No. 22 of 2014) is not part of the Alcoholic Drinks Control (Amendment) Bill (Senate Bill No. 5 of 2014). Neither is it part of the Public Fundraising Bill (Senate Bill No. 28 of 2014). In fact, we ought to have even listed each one of them as a separate Order because each of the Bills is an independent Bill. So, we cannot say by reporting progress on the Alcoholic Drinks

Control (Amendment) Bill (Senate Bill No.5 of 2014), we have reported progress on the Potato Produce and Marketing Bill (Senate Bill No. 22 of 2014) or on the Public Fundraising Bill(Senate Bill No. 28 of 2014).

This narrow approach to the procedures and Standing Orders of this House is actually going to curtail progress of business. We have to be liberal. Nothing is cast in stone. I can remind you that in the Seventh Parliament– Sen. (Prof.) Anyang'-Nyong'o can tell you – I was in the Speaker's Panel and I made a ruling. After reflection, I realised I had made a ruling against the Standing Orders and the law. The next day, as the Speaker on the Panel, I came back to the House and rescinded the ruling I had made the previous day. Sen. (Prof.) Anyang'-Nyong'o is a witness to this.

Mr. Temporary Speaker, Sir, you may not have made a deliberate mistake. Human beings make mistakes. When you make a mistake, you own it up, retrace your steps and take the right directions.

Mr. Temporary Speaker, Sir, this House is run by the Chair with the Standing Orders, the Constitution and all enabling law. You are not flouting any Standing Order; you are not breaking any rule or law in rescinding the calling of Order No.10 and going back to Order No.9. The reporting of progress was only in relation to one of the Bills under Order No.9. Sen. Adan from the Committee on National Security and Foreign Relations could not have reported progress on a private Bill sponsored by Sen. (Eng.) Muriuki or Sen. (Prof.) Anyang'-Nyong'o. That was only in relation to Order No.9(i).

Mr. Temporary Speaker, Sir, I urge you to rescind the calling of Order No.10 and we go back to Order No.9. History will absolve you; I can assure you.

(Laughter)

Sen. (Eng.) Muriuki: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to contribute again on this very important matter. We are discussing a very critical procedure.

Mr. Temporary Speaker, Sir, putting (i), (ii) and (iii) under Order No.9 was merely a convenience. Otherwise, these were three independent Bills. There have been some benefits for combining them in the past. Now it looks like that can also be a handicap.

Mr. Temporary Speaker, Sir, we already have a problem in this House. I cannot quite recall when the Public Fundraising Bill was initiated. However, like part (ii) we have been dilly-dallying with it in one way or the other for a year. When there is a window where we can deal with it and only pend the voting aspect of it, I would, if you permit me, move that the House resolves that in future - irrespective of putting Bills together - they should be considered as three different Orders so that the putting together is merely a convenience. Otherwise, we shall lose a day if you do not agree with us for no reason other than just a procedure which is not explicit and it is you to decide.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mositet): Hon. Senators, I understand why you wanted us to dispose of (ii) and (iii). However, as you will also agree with me, we are not yet done with (i). The Committee of the Whole has already reported and it sought leave.

To me, we had already completely disposed of the entire Order No.9. You know the problem we are having. If it were not for that problem, it was our wish to make sure that we concluded (ii) and (iii).

Hon. Senators, let us move on to Order No.10, which we are already on. If all goes well, we shall finalise tomorrow.

POINT OF ORDER

SUBSTANTIATION OF ALLEGATIONS ON DISPROPORTIONATE HIRING OF STAFF WITHIN THE PSC

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. You had given me the Floor in respect of the directive that came from the Chairperson yesterday that I substantiate my allegations yesterday to the effect that the Parliamentary Service Commission (PSC) has, in the last three years, been presiding over disproportionate hiring of members of staff in the PSC. Upon being directed, I proceeded under the provisions of Article 35 of the Constitution of Kenya---

The Temporary Speaker (Sen. Mositot): Order, Sen. (Dr.) Khalwale! I am sorry to interrupt you. I understand the matter was discussed and there was a ruling from the Speaker that you could do that tomorrow.

Sen. (Dr.) Khalwale: Yes, Mr. Temporary Speaker, Sir. That information has been passed over to me. I thought that at this point, I should report to the House the status of what is going on. I do not want to be held responsible tomorrow for that which does not lie within my jurisdiction.

Just in conclusion, I moved under Article 35(1)(a) and (b) of the Constitution and approached the Clerk so that I could get an authenticated list of the names that constitute people who have been employed in the years 2013, 2014 and 2015. I was then asked by the Clerk to put it in writing which I did. The Clerk has since written back to me. Just to quote one paragraph, he says that, "Pursuant to Section 5(2)(i), 13(1)(b), 27(2), 30, 31 and 33(b) of the PSC, CAP 185(a), I require, as the Clerk, the express permission of the Chairman of the PSC and the Commission as appropriate in order to provide you with the information that you have sought."

Mr. Temporary Speaker, Sir, I want to table this letter and---

Sen. Ndiema: On a point of order, Mr. Temporary Speaker, Sir. This matter, as you rightly said, had been put off until tomorrow. It had been concluded that way. Is it, therefore, proper that the subject is discussed again today when you had already ruled on that?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I am not reopening what you ruled out. I am merely using this point of order to table the letter lest somebody thinks that I was running away from that responsibility. I now table the letter and confirm that I still stand by my Statement of yesterday, and that upon being given the list by the Clerk, I will table it in this House.

The Temporary Speaker (Sen. Mositot): We can agree that Sen. (Dr.) Khalwale can table the letter and then the substantiation can be done tomorrow. That matter is closed.

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

Sen. Ndiema, do you want to contribute on Order No.10?

Sen. Ndiema: Mr. Temporary Speaker, I had contributed unless I still had some minutes to proceed. I seek your guidance. I would gladly contribute if you give me permission.

BILLS

Second Reading

THE NATIONAL GOVERNMENT COORDINATION (AMENDMENT) BILL (SENATE BILL NO. 30 OF 2014)

(Sen. (Prof.) Lonyangapuo on 28.4.2015)

(Resumption of Debate interrupted on 28.4.2015)

Sen. Hargura: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to the National Government Coordination (Amendment) Bill (Senate Bill No. 30 of 2014) whose main amendment is the introduction of a village elder for every village unit which is actually an extension of Section 15 of the main Act which seeks to add an extra office or structure under the National Government Coordination structure which is already up to the sub-location level.

Mr. Temporary Speaker, Sir, at the village level, we have many elders. Traditionally, chiefs have been consulting many elders. Coming up and selecting one of the elders or coming up with an elder at the village who will be an employee of the national Government will not add any value. It might create problems. We already have problems with the parallel systems. Counties are already developing their own structures; they have sub-county administrators, ward administrators and village administrators. Each village unit has three to five elders.

Now parallel to that we have a system where we have a representative at the county level all the way down to the assistant chiefs. That is already duplication. That is why we have been saying that it is better the national system is structured to fit into the county system and give it more prominence. Now we are strengthening the national system.

Basically, I will not support adding the position of an elder because we have many elders. Chiefs have been consulting many elders. This might hinder the work of the chiefs. If you have one elder who is employed by the Government, what will enable the other elders to participate in maintenance of law and order for the national Government

and in identifying the development priorities in the county governments if you only have one elder who is an employee of the national Government. I would rather we leave the structure as it is and let the county governments form their own systems up to the village elders, but we keep the national Government at the sub-location level.

I oppose having this extra level of Government where we have an elder employed by the Public Service Commission (PSC). This can create problems at the village level.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I have read the proposed amendment. In my capacity as a Member of the Legal Affairs and Human Rights Commission, I would like to report to this House that we conducted a public hearing on this particular amendment. The public were very concerned about this amendment, particularly on whether or not this is a matter that concerns counties and whether it was in our jurisdiction. Secondly, the proposed fund that is created under amendment to Clause 3 which has provided for Clause 15(a)(2) will not violate the Constitution in respect of the fact that we do not have a mandate to create a fund as Senate. I want to agree with the last speaker on this.

The Constitution proposed that we would do away with the provincial administration within five years of promulgation of this Constitution. What we are attempting to do now is, in fact, strengthening provincial administration which the public sought to have removed. I disagree with this amendment in its entirety because I have read the memorandum and objects of this proposed amendment. It reads:-

“The principle object of this Bill is to amend the National Government Coordination Act so as to recognize and provide for the role of village elders in execution of national Government and county government functions.”

There is no role of county government under National Government Coordination Act No.1 of 2030. We have tabled here a report through the Committee of Legal Affairs and Human Rights, that there is, in fact, a duplication of functions between national Government under the National Government Coordination Act and the County Government Act. The duplication of roles all the way to the village has caused a petitioner to file a petition in the Senate, which report we have already submitted.

That report says that, in fact, this Senate ought to amend the law so that we do not create a parallel system of governance and conflict at county level. There is no reason given in the Memorandum and Objects to suggest what mischief this Senate is trying to solve by having another cadre of people called village elders at the county level.

The method of appointing these persons is also not specified. When we have a problem already at the national level, like during yesterday's debate where we were saying that the Salaries and Remuneration Commission (SRC) together with Treasury will consult in terms of how much money they are expending on the wage bill. Is it not a duplication to then add another cadre of village elders and then increase the wage bill?

Would it not be in our own best interest to suggest that this particular cadre of persons, if necessary, should be under the county government, under the ward administrator and not the national Government because the assistant chief in my view is a very effective person. Now, by creating another lower level beyond a sub chief, I think we are taking this a little too far without an explanation to this Republic as to why we

need a person below a subchief. Are we saying that the subchief or the assistant chief is not effective? What is the purpose?

Mr. Temporary Speaker, Sir, this Memorandum of Objects of Reasons does not specify because it says: “The village elders continue playing a critical role in matters of security; the elders work closely with the chiefs and subchiefs and they have become an integral part of the functioning of the national government at village level. It is, therefore, proposed that they be recruited and appointed by the Public Service Commission (PSC)”. There is no criteria which has been set out. It is as ambiguous as it can be. This amendment would lead to even more dangerous precedence because the structures of village elders are not uniform throughout the Republic and, therefore, in an attempt to recognize the already informal structures in other areas which have elders who help in security matters, who by reasonable extension have to extend to areas where you do not have village elders conducting these functions.

There must be another method; that you can recognize the village elders who are performing a role without necessarily, including them in this because we will have to go back to the National Coordination Act and then say: How many village elders are we going to recognize? Is it ten, seven or eight? What would be their minimum age; is it 90 years, 70 years or 80 years? What would be their education qualifications? Would it be a Form Four certificate or what? We are making an amendment that will not have legs to stand on. We would then increase the wage bill and complicate the work of the provincial administration. In my own view, we will be going against what the Kenyan public passed by demanding that the provincial administration be restructured within five years of the promulgation of this Constitution. Those five years will expire on 26th or 27th August, 2015. This amendment will be against the principle upon which we thought we should restructure provincial administration and give more powers to county governments, to manage villages and wards.

I beg to oppose this proposed amendment to Clause 15A for the reasons that I have stated. One, we are creating a fund which is not within our mandate as the Senate. Two, we are also violating the Constitution by getting into matters of security, in a way that would suggest that the security function is a matter that is shared between the national Government and the county governments. This is something that has not been resolved. The Cabinet Secretary in charge of devolution was very clear in Kisumu; that this is not a shared function. Unless and until we have a policy formulation that states that security is a shared function, we should not in this amendment pretend that it is, because it is not. When it is then accepted that it is a shared function, under Article 189 of the Constitution, we will not start at the village level, but at the top.

In the proposal made by the CORD to amend the Constitution, we have even given direction on this issue. We have suggested that there should be a council chaired by the governor at the county level, so that we start the shared functions of security at the county level. Until those amendments find their way into the Constitution, this amendment is unconstitutional to that extent.

With those few remarks, I beg to oppose.

The Temporary Speaker (Sen. Mositot): I now call upon the Mover to reply.

Sen. (Prof.) Lesan: On a point of order, Mr. Temporary Speaker, Sir. I rise under Standing Order No.54(3) which reads:-

“Despite paragraph (2), the Speaker may, on the request of a Senator, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

The Temporary Speaker (Sen. Mositet): Sen. (Prof.) Lesan, I do agree with your request. The voting will be done tomorrow.

Next Order!

Second Reading

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

The Temporary Speaker (Sen. Mositet): Since the Mover of the Bill is not here, I will defer it.

(Bill deferred)

We will also defer Order Nos.12, 13, 14, 15 and 16.

MOTIONS

ADOPTION OF INTERIM REPORT OF THE CPAIC ON
INQUIRY INTO COUNTY GOVERNMENTS' ACCOUNTS
FOR FINANCIAL YEAR 2012/2013

THAT, the Senate adopts the Interim report of the Senate Sessional Committee on County Public Accounts and Investments on the inquiry into County Government Accounts for the Financial Year 2012/2013- (1st January to 30th June, 2013).

(Motion deferred)

ADOPTION OF REPORT ON THE
OPERATIONS OF MAKUENI COUNTY

THAT, the Senate adopts the Report of the Standing Committee on Finance, Commerce and Budget on Operations of Makueni County Assembly laid on the Table of the House on Wednesday, 1st April, 2015.

(Motion deferred)

ADOPTION OF CRA REPORT ON THE RECOMMENDED
COUNTY GOVERNMENTS' BUDGET CEILINGS
FOR FINANCIAL YEAR 2015/2016

THAT, the Senate adopts the Report of the Commission on Revenue Allocation on the recommended County Governments Budget ceilings on recurrent expenditures for new structures for the Financial Year 2015/16 pursuant to section 107 (2A) of the Public Finance Management Act laid on the Table of the House on Wednesday, 1st April, 2015.

(Motion deferred)

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

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

(Motion deferred)

ADOPTION OF ENERGY COMMITTEE REPORT ON
FACT-FINDING VISIT TO MUI BASIN, KITUI COUNTY

THAT, this House adopts the Report of the Standing Committee on Energy on the Fact Finding Visit to Mui Basin, Kitui County on 3rd September, 2014, laid on the Table of the House on Wednesday, 1st April, 2015.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Hon. Senators, there being no further business, it is now time to adjourn the House. The House, therefore, stands adjourned until tomorrow Thursday, 30th April, 2015, at 2.30 p.m.

The Senate rose at 5.15 p.m.