

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 17th June, 2015

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

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

PRAYERS

(Loud consultations)

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I request you to indulge me so that we apologise to you. If you notices, when you came in, there was a lot of excitement and loud consultations. That was for no other reason, but to welcome Sen. Wangari who successfully delivered a baby boy called Allan, “the Bull fighter.”

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Dr.Khalwale! Yes, you are right on that one. I came in and wondered what was happening in the House. Usually, when the Speaker enters the Chamber, all should be upstanding and in total silence. I also expected such a point of order to also come from Sen. Khaniri. Thirdly, you should have declared your interest in that particular order. However, the Chair also associates himself with those sentiments and congratulates her.

PETITIONS**PETITION BY EMALI AND MULALA RESIDENTS
ON THE BOUNDARY DISPUTE BETWEEN
MAKUENI AND KAJIADO COUNTIES**

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I beg to lay the following Petition on the Table:-

A petition made by the residents of Emali, Mulala Ward in Makueni County. The petition reads as follows:-

We, the 43 undersigned citizens of the Republic of Kenya and residents of Emali, Mulala Ward in Makueni County draw the attention of the Senate to the following.

(1) That there exists a historical feud as to the location of Emali Town along the historical boundary as per the treaty between the Maasai and Kambas in the early 1900s.

(2) That, the Emali, Mulala residents through the Emali Residents Association forwarded their complaint to Senator of Makueni, Mutula Kilonzo Jnr.

(3) The Senate wrote to the Independent Electoral and Boundaries Commission (IEBC) seeking a clarification to the above disputed boundary.

(4) That the Senate received a response from the IEBC clarifying the disputed boundary to be a fixed survey cadastral boundary that marks the perimeter boundary of the township to the west approximately, 800 metres from the railway line to the high voltage power line and the whole township is defined by that cadastral boundary falls under Makueni County where the residents are represented from Makueni County, Kibwezi West Constituency, Emali Mulala Ward as per the IEBC Gazette Notice of 2012 as amended by the High Court in July, 2012.

(5) That, the Kajiado County is collecting revenue from traders in the disputed area of Emali Town which is in Makueni Town.

(6) That the people living in the disputed area of Emali Town have faced interference from the officials of Kajiado County, especially those from the Lands Department on matters such as property registration.

(7) That service delivery to the people of the disputed area of Emali has been greatly hampered as neither Kajiado nor Makueni County Government is offering services to the people of said area.

(8) We have made best efforts to have this matter resolved amicably by the respective county governments without success.

(9) That the issues in respect of this petition are not pending before any court of law, constitutional or legal body.

Therefore, the petitioners pray that the Senate forms an independent commission under Article 188 of the Constitution to establish the boundary dispute between the counties of Makueni and Kajiado at Emali. Your petitioners ever, pray dated 2nd June, 2015. The petition is countersigned by Sen. Mutula Kilonzo Jnr..

Sen. Mositet: Asante sana, Bw. Spika. Kuhusu maombi ya watu wa Mulala ambayo Sen. Mutula Kilonzo Jnr. ameleta, ningetaka kusema hakuna siku watu wa

Kajiado na watu wa Makueni wameshaka kuongea kuhusu shida ya mpaka. Kama kuna shida iliyotokea, hiyo ililetwa na Kenya Gazette ya 1992 wakati nchi yetu ilibadilisha mfumo wa kisiasa wa chama kimoja na kuwa na demokrasia ya vyama vingi. Wakati huo, miji mingi yetu ilikuwa ikifurahia demokrasia ambayo ilikuwa imepatikana. Watu wengi, hasa wale ambao walikuwa wakikifuata chama kilichokuwa kikitawala, walipatwa na uoga wakilogopa kwamba demokrasia ambayo ilikuwa imekuja ingewatoa uongozini. Kwa sababu hiyo, walienda kwa tume ambayo inasimamia uchaguzi na kubadilisha jiji la Emali kuwa upande wa Makueni. Sultan Hamud pia iliwekwa upande wa Makueni. Baadaye, tulijua mpaka wetu ulikuwa ni reli. Pale Sultan Hamud, watu wetu walijua mpaka wetu ni reli.

Wacha niseme wazi kwamba hakuna mji wetu katika Kajiado Kaunti ulijipata ukiwa mji bila idhini ya watu wetu. Mbeleni tulikuwa na mashamba ya vikundi. Wakati vichaka vilianza kukatwakatwa na watu wakaanza kumilika mashamba, sehemu fulani zilitengwa kama miji. Miji ya Emali na Sultan Hamud upande wa Kajiado zilibuniwa kutoka kwa mashamba ya vikundi. Kuna mashamba ambayo hadi leo yana vyeti vya umiliki ambavyo vinaonyesha kwamba mipaka yake ni reli. Nikisema hivyo, tuna Mbunge ambaye ni wa Jumuiya ya Afrika Mashariki, Madam Pareno, ambaye shamba la baba yake mpaka wake ni reli. Ukifuatilia mambo ya mashamba ya vikundi, utapata mambo haya ni sawa.

Chifu wa kwanza wa Kajiado, ofisi yake ilikuwa Emali. Vyeti ambavyo ni vya kumiliki mashamba katika sehemu hiyo vilikuwa vikitolewa na Kajiado County Council. Naomba Sen. Mutula Kilozi Jnr., ingawa maombi yake ni mazuri, tuangalie mambo haya kwa makini sana. Hii ni kwa sababu watu wetu wa Emali kutoka Ukambani na kutoka Kajiado hawajawahi kuwa na shida za mpaka. Hakuna mpaka ambao umeshahamishwa. Hatujawahi sikia hayo.

The Speaker (Hon. Ethuro): Maliza, mhe. Seneta.

Sen. Mositet: Bw. Spika, nimesema hivyo kwa sababu najua ni njia gani Seneta anataka kupitia. Tayari tuna shida nyingi za mipaka katika nchi yetu. Ningemuomba mhe. Seneta Mutula Kilonzo Jnr. Kwanza tubuni sheria za mipaka. Hii ni kwa sababu mizozo ya mipaka nchini Kenya imeleta utata sana. Ningependa Serikali Kuu ihakikishe imebuni kamati maalum ambayo itajumuisha watu ambao walikuwa wakuu wa mikoa na maofisa wa tume ya uchaguzi. Pia tunaweza kuwahusisha maofisa wa Tume ya Swazuri ambayo inahusika na kuangalia mambo ya historia kuhusu ugavi wa ardhi hapa nchini. Baada ya hayo, tuwape siku 90 ili waweze kutupa jawabu kuhusu utata huo wa mipaka. Hivi sasa, ningependa kuwaambia watu wa Emali na wale wa Makueni wakae kwa amani. Amani ndio imewafikisha pahali walipo na wazianzishe vita vyovyote vile kwa sababu ya mipaka ya kaunti hizi mbili.

Bw. Spika, kwa hayo machache, ninaunga mkono.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, this is not the first time that this issue of boundary disputes is coming to this House. When it was formally debated in this House, finally, it has arisen a lot of such complaints elsewhere in the country. Today as I speak, such a complaint has suddenly come up in Vihiga at a place called Maseno.

Maybe we, as Senators, might want to reconsider and lead this country in teaching our people that the exercise of trying to rediscover the so called “historical injustices” is going to be more difficult and more challenging than if we accepted to leave the *status quo* to remain? If we truly want to build a country called Kenya, what should it matter if a boundary is three kilometres away from where it was supposed to be next to a railway line?

Mr. Speaker, Sir, if you go to Kakamega County, we have disputed in places like Khuvasali where people live in Mosop in Nandi. You find we have Luhyas who live in Nandi in a place called Kapkangani and so on. They just live as one. It is important that we forget about these things and let the boundaries remain the way they are because even if we review them, the real solution is bigger. For example, the Luhyas would rather that all the Luhyas who are in Uganda are brought to be part of the Luhyas in Kenya and so on and so forth. You can never finish this thing. We should just forget about it and move on as a country.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I join my colleagues in saying that this House is the only hope that Kenyans have, especially where we have disputes. I recall a dispute on the West Pokot-Turkana boundary border where criminals have been operating and laying claim to the extent that they end up taking people’s cattle until a new terminology was born called “cattle rustling”. Now other Kenyans are assigning cattle rustling to belong to the Pokots and the Turkana.

Mr. Speaker, Sir, for the last three weeks, we have had very good peace in the two counties of Pokot and Turkana. This is majorly because of the leaders from that region led by the two Senators, the Governors and so on, worked round the clock to make sure that we have relative peace. Today people are moving around and visiting one another. These are people I have never met for the last 20 years.

These boundaries which people want to assign and demarcate for the sake of knowing who should live where and particularly with the arrival of minerals in Turkana and Pokot regions, and the arrival of the railway in Makueni and Kajiado, people on the ground can easily be misled to think you benefit more when you are closer to the resource. It is time the Senate the national Government worked closely to bring peace and order as attempts are being made by a committee recognized in Article 188 to sort out these issues. Over 22 counties seem to have disputes which will not create another country even we solved or did not solve them.

It is time we told Kenyans who are listening to us not to take law into their hands, but instead allow leaders and the national Government to take their role.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, this matter if not handled properly can bring untold calamities to this country. The Chair, Sen. Ntutu, Sen. Obure, Sen. Muthama, Sen. Billow and a few others were in Bomas during the Constitution making process and you may recall how animated the issue of boundaries in creating counties was until even the very noble idea that would have made counties more valuable and sustainable that came up in Bomas where you remember we said that we needed 16 regions, but nobody could agree on boundaries until we came to an arbitrary agreement that all districts as at 1994 were to be counties. That is why you find very

unequal counties like Tharaka-Nithi with two constituencies, Kakamega with 13 constituencies and so on and so forth. That was a compromise.

This Constitution says that a Kenyan has the right to live anywhere in this country. This Constitution also provided a safety net in Article 188 on how boundaries can be resolved. I want to urge Senators, as the defenders and protectors of counties and their governments, to advise their counties that trying to make their boundaries elastic is not going to help this country; whether today or tomorrow, it will not help this country. Even as we are trying to form a commission through a Motion brought by Sen. Mutula Kilonzo Jnr. every time I reflect on it, I think that we may end up tearing this country part. This is because each and every county is eyeing an inch or two of the next county citing historical injustices, overbearing politicians in the 1960s, colonial biases, land grabbing *et cetera*. Some of these things are better let to lie why they fell than be opened.

This Senate owes this country more than any other institution to inform the country that anybody who has a sense in this country will tell you that the most bastardized community in terms of land and boundaries are the Maasai, but they have learnt to live where they are. If the Maasai can take it and live where they are, I do not see why everybody else should not. The Maasai occupied land up to western Kenya, Laikipia and Mombasa. Everybody is living on Maasai land. I do not think it will make any sense to anybody for the Maasais to say that these were historical injustices and that they want their land back. Let us guide the country so that we have peace, tranquility and prosperity within the confines of the current Constitution.

Sen. Orengo: Mr. Speaker, Sir, I associate myself with the views expressed by the Senator for Kakamega County and the Senate Minority Leader, Sen. Wetangula, in the sense that the Constitution presumes that already defined counties exist. Often times, we have been quoting Article 188 as a basis for demarcating or establishing boundaries between one county and another. However, under Article 188, addresses instances where you want to alter the boundaries. The mandate of the Commission is not to determine where the boundaries are. It is only when you want to alter the boundaries of a county. To that extent, the National Assembly and the Senate will have a role to play in terms of altering boundaries.

Mr. Speaker, Sir, sometime ago when the issue of Maseno came about, I said that we should look at boundaries as bridges, but not walls. I was in Wajir the other day. The people of Wajir said that they know where the boundary between Kenya and Somalia is. They have lived in such a way that at certain times of the year, they take their cattle up to Kismayu in search for pasture. There are times when people on the other side of the border cross to this other side of the border.

Mr. Speaker, Sir, even in Siaya County, you will find that there are large sections of Siaya inhabited by the Luhya Community who are very happy to be in Siaya. In Busia County, there are vast areas inhabited by the Luo Community and they are happy to be in Busia. In fact, you will find Luo chiefs and assistant chiefs on the other side of the border; that is in Busia County.

I plead with this Senate that we should bring a crisis that is not necessary at this point in time. Let us ensure that our people can live together as brothers and sisters. We

should not claim that Maseno belongs to this or that county. Busia Town is found on the border between Kenya and Uganda. Boundaries are just for purposes of taxation and immigration. However, in real sense, people around there, live together as one community. A danger may come very soon when we politicise the issue of boundaries. If that happens, we will be headed to the wrong direction.

The Constitution presumes that boundaries are already known. Article 6(1) of the Constitution states that:-

“The territory of Kenya is divided into the counties specified in the First Schedule.”

That First Schedule is thereby not accident. It is as a result of a legislation which defined where the boundaries of counties, which were then districts when they were demarcated. Therefore, I plead that we should make the issue of boundaries as a basis of bringing us together, but not dividing us.

Thank you, Mr. Speaker, Sir.

Sen. Sijeny: Mr. Speaker, Sir, it is good and important that we are talking about most of the burning or small issues which could turn up to be very big. Boundaries are very sensitive. They should be discussed and an amicable solution reached at. If we do not handle these issues very carefully, they will result into conflict.

We had Post Election Violence (PEV) and witnessed our country burning. Small issues like these ones could start, but eventually end up being big. We have heard someone questioning about boundary disputes between Kajiado and Makueni counties. We have also heard about boundary disputes in Kakamega and other areas. People may start bringing up boundary disputes having seen others do so. We do not want that to happen. This is a time we are trying to build our nation, improve on cohesion and move forward. We, as a Senate, must ensure that we take the lead and come up with solutions.

I know that these are issues we have been debating on. There is a Bill by the Committee on Legal Affairs and Human Rights that will ensure that there are proper ways and processes of mediation to ensure that we arrive at amicable solutions that can help us handle such situations. This is because year in, year out, and generation to generation, we have witnessed such issues. If they are not handled properly, they will repeat themselves. Therefore, I support that there be a proper way of handling these issues.

The Speaker (Hon. Ethuro): Order, Senators! I can see that there is still quite a bit of interest. However, we are getting somewhere. Therefore, let us conclude on the issue.

Hon. Senators, as you are aware, Article 188 of the Constitution of Kenya mandates Parliament, upon the recommendation of an independent commission set up for that purpose, to approve alteration of county boundaries. On the 11th March, 2015, following conclusion of debate on a Motion by the Senator for Makueni County, Sen. Mutula Kilonzo Jnr., this House directed the Standing Committee on Legal Affairs and Human Rights to initiate and prioritise the drafting of legislation within 90 days of the said resolution to provide for the establishment of an independent commission to inquire

into, examine and identify the boundaries of counties taking to account the criteria set out in Article 188(2) of the Constitution.

The Committee was further tasked to review the existing legal framework and make appropriate recommendations on how to comprehensively address and resolve inter-county boundary disputes to enhance national cohesion and stability.

Hon. Senators, having reviewed the petition by the residents of Emali, Mulala Ward in Makueni County as presented today on their behalf by the Senator for Makueni County, I note that the petitioners are requesting the Senate to establish an independent commission as provided for at Article 188 of the Constitution for purposes of investigating the boundary dispute between Makueni and Kajiado counties at Emali Township.

Hon. Senators, I am aware that there are ongoing efforts to resolve this matter amicably, involving leaders from both Kajiado and Makueni counties as well as the National Land Commission (NLC). I am also aware that the Independent Electoral and Boundaries Commission (IEBC) has pronounced itself on the matter and that has been stated in the petition.

While these efforts should be commended, I note the Constitution in this case, and specifically Article 188 as many of you have already described, sets out the manner in which a county boundary may be altered. It also set out the criteria to be considered in arriving at such a determination. Article 188(1) provides that:-

“The boundaries of a county may be altered only by a resolution

(a) recommended by an independent commission set up for that purpose by Parliament; and

(b) passed by-

(i) the National Assembly, with the support of at least two-thirds of all of the members of the Assembly; and

(ii) the Senate, with the support of at least two-thirds of all of the county delegations.”

That being the case and noting that the matter of the legal framework to establishing such a commission is pending before the Standing Committee on Legal Affairs and Human Rights, I direct that the petition, in terms of Standing Order No.227(1), be committed to the said Committee.

In terms of Standing Order No.227(2), the Committee will be required, in not more than sixty days from the time of reading the prayer, to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

Thank you.

*(The Petition was committed to the Committee on Legal Affairs
and Human Rights)*

Next Order!

NOTICE OF MOTION

THE TOBACCO CONTROL REGULATIONS, 2014

Sen. Sang: Mr. Speaker, Sir, I beg to give notice of the following Motion:-
THAT, the Speaker do leave the Chair to facilitate consideration of the Tobacco Control Regulations, 2014.

STATEMENTS

STATUS OF ROADS IN THE COUNTRY

Sen. Sijeny: Mr. Speaker, Sir, Sen. Dan Mwazo had requested for a Statement. He has received it, but I cannot see him. I just want to put it in record that the Committee on Roads was ready with the answer, but the Senator is not in the House.

The Speaker (Hon. Ethuro): Next order!

Sen. Okong'o: On a point of order, Mr. Speaker, Sir. I am a bit confused regarding the Order Paper. I heard Sen. Sang asking the Speaker to leave the Chair and then from the Clerk's Table we were taken to Statements. From there I have seen Sen. Sijeny and---

The Speaker (Hon. Ethuro): Order! Order, Sen. Okong'o. Spare the House more confusion. Let us leave it there. I urge you to make use of your neighbourhood, the Senator for Kakamega.

(Laughter)

BILLS*First Readings*

THE SELF HELP ASSOCIATIONS BILL
(SENATE BILL NO. 2 OF 2015)

THE CANCER PREVENTION AND CONTROL (AMENDMENT) BILL
(SENATE BILL NO.3 OF 2015)

THE HIV AND AIDS PREVENTION AND CONTROL (AMENDMENT) BILL
(SENATE BILL NO.4 OF 2015)

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(Orders for First Readings read – Read the First Time and ordered to be referred to the relevant Senate Committees)

MOTION

THE TOBACCO CONTROL REGULATIONS, 2014

The Speaker (Hon. Ethuro): Order, Senators! We are now on the Supplementary Order Paper.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I rise under Standing Order No.39 (2) to find out why public resources have been wasted today in printing a Supplementary Order Paper, when all that was required was for you to apply Standing Order No.39 to achieve what the Supplementary Order Paper appears to want to achieve. Why have public funds been wasted on printing an entire Supplementary Order Paper?

The Speaker (Hon. Ethuro): You have a point, Sen. Boni, but we have also requirements which are justified from even the point of order raised by your good neighbour, the Senator for Nyamira; that these things must be made abundantly clear. So, there was need to reorganize the Order Paper. That reorganization could not have been achieved by Standing Order No.39(2). There was a notice to be given and need to harmonize the two issues under the Committee of the Whole. But we always take into account your consideration.

Sen. Sang: Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, the Speaker do leave the Chair to facilitate consideration of the Tobacco Control Regulations, 2014.

Mr. Speaker, Sir, the Tobacco Control Regulations were gazetted on 5th December, 2014 under Legal Notice No.169---

(Sen. (Prof.) Kindiki was applauded as he walked into the Chamber)

Mr. Speaker, Sir, the last time I saw the Senate Majority Leader was in a function in my county, where we had fruitful engagement with the Head of State and many other leaders. I want to appreciate that he has been able to come back to the House to execute his responsibilities as the Senate Majority Leader. I also wish to note that he actually spoke on behalf of the Senate bravely and pointed out the issues that this House has been addressing for the last three days. I want to congratulate him because he stood for the Senate at a time when very few people would be able to stand in the manner that he did.

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

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I am sorry, I was actually listening.

The Speaker (Hon. Ethuro): When you are listening, you do not indicate to me that you want to speak.

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Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, could the Senator for Nandi, my good neighbour substantiate what he means by giving all those accolades to the Senate Majority Leader because the House is not aware. What is he talking about? Could he substantiate?

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale knows the rules. You do not substantiate the obvious.

(Laughter)

In fact, I was wondering whether you had stopped your appreciation of the Senate Majority Leader. Given the applause he received, even the Speaker does not. It was too obvious.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, allow me to congratulate you for finally agreeing with the words of one of the greatest brains that sat on that Chair, Jean Marie Seroney. He ruled that a Member cannot be called upon to substantiate the obvious. We have been trying to prod the Chair to take that position unsuccessfully. That it has been done today, a round of applause for the Speaker.

An hon. Senator: Maybe it was not so obvious.

(Applause)

The Speaker (Hon. Ethuro): Sen. Wetangula, what may be obvious to me may not be obvious to you. So, do not think that you might use that forever. It must be made abundantly obvious.

Sen. Orenge: On a point of order, Mr. Speaker, Sir. In fact, you have taken words out of my mouth. You can only be faulted when the matter is not abundantly obvious. On the matter concerning the Senate Majority Leader, if one is not aware of what has happened, then that person is not aware of the battles that the Senate is fighting.

(Laughter)

In this regard, I think the reason why this matter was so obvious to you, is that when it comes to the issues of the Senate, its independence and constitutional authority, you do not need to be convinced. That is why we went to the Supreme Court. Therefore, the Senate Majority Leader will stand by the Speaker at any time as one House.

The Speaker (Hon. Ethuro): Sen. Orenge, you have explained it better. When it comes to the Senate, the independence and discharge of your duty should be obvious to all.

Sen. Murkomen, I will also allow you to speak because it is increasingly becoming obvious to you.

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Sen. Murkomen: Mr. Speaker, Sir, while we all applaud the Senate Majority Leader, could I also be applauded for moving the Motion on his behalf in his absence.

(Laughter)

As a matter of fact, I second what Sen. Sang said. I was present when Sen. (Prof.) Kindiki, the Senate Majority Leader, stood very firm and announced that the world has seen nothing yet in terms of our defence of this House. We will stand firm because we believe in this House.

The Speaker (Hon. Ethuro): Proceed, Sen. Sang. I would encourage Sen. Murkomen to look for more friends to appreciate him too.

Sen. Sang: Mr. Speaker, Sir, the Tobacco Control Regulations were gazetted on 5th December, 2014 under Legal Notice No.169 of 2014. The key purpose of the Regulations is to give effect to the Tobacco Control Act of 2007.

The Regulations specifically address tobacco production, manufacture, sale, labelling, advertising, promotion, sponsorship and use of tobacco products, including exposure to tobacco smoke. The regulations were supposed to come into operation on 5th June, 2015.

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

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

The legal basis of the Tobacco Control Regulations, 2014, is premised on Section 53 of the Tobacco Control Act, No. 41 of 2007, which provides powers to the Cabinet Secretary to make regulations in the following terms:-

The Cabinet Secretary may on recommendations of the Board, in this case the Tobacco Control Board, make regulations:-

- (a) For prescribing anything provided for or required by this Act to be prescribed.
- (b) Prohibiting anything required by this Act to be prohibited.
- (c) Generally for the better carrying out of the objects of this Act.

Mr. Temporary Speaker, Sir, also the Cabinet Secretary, may under the Tobacco Control Act, in consultation with Cabinet Secretaries for the time being responsible for matters relating to agriculture, trade, industry, finance, education, information and communication, foreign affairs, internal security and other relevant Ministries formulate the policy framework regarding the multi-disciplinary and inter-sectoral implementation of this Act and any other matter which is necessary or expedient to prescribe in order to achieve and promote the objects of the Act.

The key provisions under the regulations are that the regulations provide that prior to coming into force by this regulations, that several stakeholder meetings were held. Among the issues discussed were the solatium contribution, product disclosure, packaging and labelling and requirements. Public forums were held and sharing of the health pictorial warnings under the First Schedule was undertaken.

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The Committee scrutinized these Regulations in accordance with the enabling legislation which in this case is the Statutory Instruments Act. As the Senators are aware, the regulation making powers is a power donated by this House to the Cabinet Secretary. The law provides on how that donated power to the Executive or any other regulation making authority is supposed to be exercised. We appreciate what the Cabinet Secretary responsible for health has done in ensuring that these regulations are enacted.

However, as we may highlight later on, we found a number of concerns that need to be addressed by the Cabinet Secretary. The highlight of the Regulations is that Part 1 which is the preliminary, contains the citations and interpretations.

Part 2 deals with packaging and labelling. This Part regulates the following issues:-

- (1) The use of both health messages and pictorial warnings.
- (2) It also stipulates that the health messages should be on both the wrapper and the packet.
- (3) It requires the health messages, pictures and pictorials not to be damaged or concealed.
- (4) It provides for the requirement of the rotation of the specific health warnings and messages in accordance with Section 21 (3) of the parent act.
- (5) It also provides for the standard format of health warnings and messages.
- (6) It also prohibits certain products description, for example, by name, brand, text, pictorial and any other suggestions. The requirements also provide the industries to have product identification code markings. It is also provide that the Cabinet Secretary for Health is the technical repository for pictorial health warnings. It also provides the requirement for display of clear signs prohibiting the sale of tobacco products to persons under the age of 18.

Mr. Temporary Speaker, Sir, Part 3 provides the information by the manufacturer and the importer. This part indicates clearly the information that is to be given by the tobacco industry to the Cabinet Secretary for health. This includes a list of all the ingredients that the tobacco product contains, including the quantities per unit of the tobacco product industry disclosures, for example, the production, sale and revenue earned.

Part 4 provides the protection against the exposure to second-hand smoke. This part sets out the regulations with regards to the protection of the public from second-hand smoke. This part prohibits the following;

- (1) The smoking in private vehicles where children are on board.
This is important because it ensures that children are not exposed to secondary smoke.
- (2) It also stipulates the requirement to display the notice in a prohibited smoking area.

To display that notice is important.

- (3) It also stipulates the need for supervision of non-smoking areas by the owner or manager of the area prohibited. It also provides specific designated smoking areas to comply with the requirement stipulated under Section 35(2) of the Tobacco Control Act.

This requires obtaining of a Certificate of Compliance from the Director of Medical Services in the form set out in the Forth Schedule.

Mr. Temporary Speaker, Sir, Part 4 provides that the Cabinet Secretary for health shall maintain a technical depository for the required non-smoking warnings.

Under Part 5, it discusses the Public Tobacco Industry Regulations. This is critical because the Cabinet Secretary indicates that this part seeks to domesticate Article 5.3 of the World Health Organization (WHO) Framework convention on Tobacco Control. This states as follows.

“In setting and implementing their public health policies with respect to tobacco control, parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with international law.”

The requirement to be fulfilled in interactions of public authorities with tobacco control includes what is provided under Regulation 22. It provides the limitation to the extent that is strictly necessary to ensure effective tobacco control enforcement of relevant laws. It ensures that the disclosure of any prior interaction or intentions of that interaction with the tobacco industry. At the Committee of the Whole, we will provide a number of the regulations that we think need to be amended or annulled to give effect to that.

The Tobacco Control Fund is established under Part 6, which principally deals with the Tobacco Control Fund. Regulation 37 states that a solution contribution payable to the fund by the tobacco industry shall be 2 per cent of the value of the tobacco product manufactured and imported in that financial year. This is one of the issues that we will address in the Committee of the Whole because these solution contributions amount to taxing. The Constitution and the Public Finance Management Act provides clearly on the means, ways and how to impose taxation. This goes contrary to the Constitution and the Act. This is not provided by the Tobacco Control Act. Therefore, it will address that.

Regulation 38(1) gives power to the Cabinet Secretary to direct the property forfeited to the State under Section 52 of the Tobacco Control Act to be transmitted to the Fund.

Part 7 on enforcement gives power to authorized officers to enforce the regulation. Regulation 29 provides that an authorized officer include Medical Officers of Health, the Custom officers, police officers the Administration Police officers, Prison officers, the Local Authorities Inspectorate officers and the Kenya Forest Rangers. These are the officers indentified in this part as officers who can help in the reinforcement of these regulations.

Part 8 provides miscellaneous provisions that the board shall make regulation under regulation 41 to convene annual public hearings at the national and the county level to receive reports, public views and comments from interested persons.

Mr. Temporary Speaker, Sir, some of the key issues for consideration when the Committee sat down and scrutinized these regulations, was that Kenya signed and ratified the WHO Framework for Convention on Tobacco Control. This was partly domesticated within the Tobacco Control Act as provided. Some of the issues are captured within the regulations. Kenya domesticated the Convention under the Tobacco Control Act in 2007,

which provides for critical provisions such as a smoke free public places, progressive graphic health warning provisions, comprehensive ban on tobacco advertising promotions and sponsorship, tax and price measures, alternative livelihoods, public awareness and education. The country has also developed the National Action Plan for 2010/2015. These are clear indications of the country's commitment to tobacco control.

Mr. Temporary Speaker, Sir, the Tobacco Control Regulations 2014 has provided a legal framework for the protection of the public health policies in Kenya. Part 5 of the Tobacco Control Regulations domesticate Article 5.3 of the WHO Convention by limiting interaction levels particularly between public officers and the tobacco industry. Strict measures have been put in place to ensure the limitation of that interaction. Studies indicate that---

(Loud Consultations)

The Senate Minority Leader (Sen. Wetangula): I want to make a contribution.

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

Proceed, Sen. Sang.

Mr. Temporary Speaker, Sir, studies have shown that some of the health issues affecting tobacco farmers include exposure to large amounts of chemicals needed as well as handling of raw tobacco leaves, often times, with no protective gears. This is particularly addressed in these regulations. The Tobacco Industry Act took close to 13 years before it was passed and enacted into law. Prior to the enactment to the Tobacco Control Act of 2007, the Ministry of Health introduced the Public Health Tobacco Product Control Rules that were aimed at ensuring smoke free places in the country through Legal Notice No.44 of 2006. Regulation No.26 provides for the mandatory disclosure by public officers of any intentions to engage with the tobacco industry.

Regulation No. 45 provides for offences and penalties. This extends to persons who are performing services on behalf of the tobacco industry.

Mr. Temporary Speaker, Sir, as a Committee, we scrutinized these regulations bearing in mind the Statutory Instruments Act. It is important to note – and I want to bring this to the attention of the Senate – that the donated power to the Cabinet Secretary to make regulations, is donated by this House. In donating those powers, this House made clear provisions on how the donated power is going to be executed. One of the most important elements is that of public participation. The constitutional provisions relating to public participation are important and provided for in the Act. The same Statutory Instruments Act provides that before any regulations making authority makes regulations, they should have public participation. It is also important to note that regulations are made pursuant to the parent Act. A cabinet secretary or any regulation making authority must not make regulations that are *ultra vires* to the parent Act or the Constitution.

We propose that if the House approves this Motion, in the Committee of the Whole we have certain provisions that we have flagged out as issues that the Cabinet Secretary in charge of Health should have looked at. Some of those inconsistencies with the Tobacco Control Act itself, are even unconstitutional. As the Chairperson of the Committee on Delegated Legislation, we have developed a good working relation with

most Cabinet Secretaries in this country, and when they make their regulations we always invite them to make presentations before us, as we scrutinize and raise the issues that have been raised by our technical team and the stakeholders.

In most cases, I appreciate that within the transport sector, we have scrutinized a lot of regulations, raised a number of concerns and pointed out inconsistencies with the parent law and the Constitution. As provided for under the Statutory Instruments Act, Section 16, on discussions with the various Cabinet Secretaries, we have addressed some of those issues and they have had to go back and regazette those regulations, amend them and ensure that they are in tandem with the Constitution and the parent Act.

Mr. Temporary Speaker, Sir, I want to express the Committee's frustration that when we invited the Cabinet Secretary in charge of Health. We wrote to him that we had certain concerns on these regulations that needed to be addressed. A number of those concerns raised constitutional issues and inconsistencies with regard to the provision of the regulations as compared to *vis- a-vis* the provisions of the Tobacco Control Act. When we invited the Cabinet Secretary, the response that we got from him is that, he was not going to appear before us because the matter was *sub judice*; that there was a matter in court relating to the same regulations. When the same Ministry appeared before court on the same suit, they indicated that they were awaiting parliamentary decision on these regulations. Therefore, you are left wondering why a Cabinet Secretary in this Republic would want to play around with the mandate of the Senate and the jurisdiction of the courts. While in court, they said that are awaiting the decision of Parliament, yet when they are invited by Parliament, they say that they are awaiting the decision of the courts. Therefore, we, as Committee, had no choice, but to recommend that certain provisions that the Cabinet Secretary was unable to come clarify and discuss with us, were going to be annulled. Those are the issues that we are proposing that when we get to the Committee of the Whole stage, we will flag out a number of those regulations.

Mr. Temporary Speaker, Sir, I also want to make it clear; that the provisions of the Tobacco Control Act, the Statutory Instruments Act and the Constitution on public and stakeholders' participation is critical. They should be implemented in accordance with the law to the satisfaction that there was a public stake holder's consultation. Calling one or two meetings and sharing your position as a ministry or a regulation making authority, with the various stakeholders, with no opportunity for us to make input does not suffice as stakeholders consultations. We urge the various Cabinet Secretaries that when these responsibilities are bestowed on them, they should appreciate the new constitutional dispensation that requires all these issues be subjected to some stakeholder's consultations.

I also want to make it clear to the members of the tobacco industry that it is important from them to work with the Government in ensuring that these issues are addressed. When there was serious public discourse on the various provisions of the tobacco regulations, we invited some of the stakeholders within the sector and they made valid contributions on issues that needed to be considered. We were hoping that by inviting the Cabinet Secretary, we would sit down, go through the regulations and concerns that we raised as a committee by the various stakeholders and have clarity and

understanding on some of those issues. I hope that based on this, the various Cabinet Secretaries will take their responsibilities seriously in terms of regulation making, so that we have smooth sailing processes of enacting regulations that will ensure that the interests of Kenyans in ensuring that public health is preserved, people are not exposed to secondary smoking and that the tobacco industry is regulated in a manner that agrees with some of the conventions that the WHO that this country has signed, are adhered to. More importantly, that we are able to regulate the sector in accordance with the Tobacco Regulations Act that Parliament passed in 2007.

Mr. Temporary Speaker, Sir, we call upon the Cabinet Secretary that as we finalize scrutinizing these regulations, they will get back to the drawing board on some of those regulations that the Committee proposes to be annulled. This is the only way we can then have fruitful engagement and discussion. We have these regulations finalized and put enacted, so that then, we can regulate the sector.

I also call upon the Member of this House to approve this Motion so that we move it to the Committee of the Whole stage, where we will go through regulation by regulation and point out the issues that the Committee thinks should be addressed.

Mr. Temporary Speaker, Sir, with those remarks, I beg to move and request that the Vice-Chairperson of the Committee on Delegated Legislation to second.

Sen. Sijeny: Thank you, Mr. Temporary Speaker, Sir. In practice of law, when your worthy opponent has eloquently and substantively gone through something, normally we tell the judge, I have nothing useful to add.

Sen. Sang has eloquently and in detail, discussed the Regulations. I wish to confirm that we, as a Committee, did all that we were expected to do. We listened to various stakeholders and invited the Ministry concerned, but you heard that we did not get their full cooperation.

I wish to state that we must adhere to the law and we shall not encourage anybody who contravenes the law. As a result of that, we, as a Committee have recommended that Regulations 3, 12, 37, 45(2) and Part 5 of be Regulations be annulled.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Chairperson (Sen. Murkomen): Sen. Wetangula is not here, so, let me put the question.

(Question put and agreed to)

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE TOBACCO CONTROL REGULATIONS, 2014

The Temporary Chairperson (Sen. Murkomen): Order, Senators! We are in the Committee of the Whole to consider the Tobacco Control Regulations, 2014. We will consider the Regulations one by one.

Regulation 3

Sen. Sang: Mr. Temporary Chairperson, Sir, we propose that Regulation 3 be annulled.

The Temporary Chairperson (Sen. Murkomen): For what reasons?

(Sen. Sang organized his documents)

Sen. Muthama: On a point of order, Mr. Temporary Chairperson, Sir. Will I be in order to say that since Sen. Sang seems not to have put his documents together, instead of having a long delay let us move on to Order No.13 and then we will come back to this? I do not think there are a lot of amendments.

Sen. Mugo: Mr. Temporary Chairperson, Sir, this is a very serious Bill that we are dealing with. It affects the lives of our people and children. I do not see the amendments on the Order Paper for us to study and speak on them.

I happened to be the Minister for Health when some of these Regulations were done and the industry was angry and got very involved. They took people on funny holidays and it even came to a point where they took us to the then Prime Minister, who invited us to discuss the issue with the stakeholders of the tobacco industry – British American Tobacco (BAT) and Mastermind Tobacco. They even sued the Minister. That is how important this Bill is. It was crafted according to the WHO standards and what is good for our people. They argued that we will lose a lot of taxes and treating people is more expensive than what we would gain in taxes.

I propose that we do not rush this Bill and annul this and that. Can we be given the opportunity to see what is being annulled so that we can contribute from a well-informed point?

The Temporary Chairperson (Sen. Murkomen): Sen. Mugo, first of all, this is not a Bill. These are the regulations under the Act. Secondly, under the same Act, these are special kinds of Regulations because the same Act says that we have no power to amend. That if we are not in agreement with a certain Regulation, it be annulled so that the Ministry can propose those provisions. Let me hear Sen. Obure.

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Sen. Obure: Mr. Temporary Chairman, Sir, I have also been listening to the presentation by Sen. Sang. I do not know why I feel that the Regulations are far too cumbersome or heavy. I have also looked at parts of the Report and I was wondering if the Committee on Delegated Legislation has examined some of these issues being raised about the impact of these Regulations on the livelihoods of people; employment, earnings by tobacco farmers and the impact on foreign exchange earnings in form of balance of payments and all the rest. I did not hear him talk about that in particular, but I am hoping that all these were considered. I think the impact of these Regulations will be far too heavy.

We are not going to be regulating on every aspect of trade. We should not legislate on every aspect of issues which affect the lives of people. Could we reduce some of these Regulations and go with the bare minimum to make life easier for operators, the industry and everybody else?

Sen. Mugo: Mr. Temporary Chairperson, Sir, I am really surprised to hear my good friend talk of employment, earnings and all that with regard to these Regulations. We are not the only country that is coming up with such Regulations. The Regulations operationalize the Act and we are not the only that is putting such Regulations in place. In fact, in some countries the Regulations are very heavy. There is no amount of earnings or employment that can justify killer diseases that this House can open to. We know smoking causes lung cancer and we spend too much money treating those people who end up dying. Are we going to exchange the gains with the lives of Kenyans? I believe this really needs very careful scrutiny and we should let industry control the lives of Kenyans.

So far some of these Regulations have worked and you can say that Kenya has become a free zone for smoking because there are very few people who smoke. It would be a sad day when Parliament or Senate opens the door for people to die of cancer.

The Temporary Chairperson (Sen. Murkomen): First before proceeding, I will ask the Chairperson to respond to the argument by Sen. Mugo that we need more time to look into these Regulations; whether he accedes to that request and why. If not, why?

Sen. Sang: Mr. Temporary Speaker, Sir, the Tobacco Regulations were published and gazetted on 5th December, 2014. We started the scrutiny process as provided by the law as a Committee and we tabled this Report which contains the sections and the deliberations of the Committee on those Regulations within the Senate before we went on recess. Therefore, the Committee Report is public document and it is available in the journal's office.

I want to make it clear that we, as a Committee, went through the process. If Sen. Mugo was around when I moved the Motion, I made clear references to what the Committee did. We invited the Ministry of Health officials and the various stakeholders who made their presentations. We, as a Committee, are guided by the Statutory Instruments Act, the Tobacco Control Regulations Act and the Constitution of Kenya. Therefore, the issues that we are going to raise and the sections of Regulations we are approving and those that we propose to annul are principally based on the interactions

and the engagements that the Committee has had. Therefore, if the Senator can wait to hear what we are doing, that would be good.

Mr. Temporary Chairperson, Sir, with regard to what the Senator for Kisii has raised, a number of the concerns that were raised have been captured in the Report and also a lot of the concerns that were raised by Sen. Mugo are also captured within the Report and that is why we are proposing to annul just sections of the Regulations.

However, it is important to note that we invited the Cabinet Secretary for Health to come and clarify a number of those issues. As I mentioned, the Cabinet Secretary did not want to come and appear before us and clarify some of those areas. Of course, we, as a Committee, still scrutinized and approved a number of those sections. However, a few of the others that may require some bit of time and engagement with the various stakeholders within the sector, we are telling the Cabinet Secretary to go back and address some of those issues. I want to say that we are ready to proceed with those amendments.

The Temporary Chairperson (Sen. Murkomen): I think I am convinced and you can proceed.

Sen. Sang: Mr. Temporary Chairperson, Sir, Regulation 3 provides for the health warnings in pictures and pictograms. The problem that we raised with this is that the Ministry of Health has not provided these pictograms and pictures to the sector within the industry. We asked the Ministry of Health to appear before us to provide those clarifications, but the Ministry did not. We, as a Committee, said that since the technical repositories and the digital stage devices that are used to generate this are not issues that are available within the country, we asked the Cabinet Secretary to sit down and agree with the sector and ensure that they have been able to address themselves to this particular concern. For that reason, we are requesting to annul Regulation 3.

(Question that Regulation 3 be annulled proposed)

Sen. Mugo: Mr. Temporary Chairperson, Sir, I really oppose annulling anything, especially the pictorial. Pictures are the ones that make a big impact. Even in countries like Australia, they put very scaring pictures on the cigarette packets that will deter people from buying that product. We should not treat it as the Cabinet Secretary's problem because it is our problem because there are Kenyans who are going to be affected. We should give it more time so that instead of annulling the Cabinet Secretary and industry should do the pictorial. I am aware that they were present. I am surprised when you say that they were not there. I do not know what happened to those pictures because they have been developed. Pictures speak volumes. Young men and women think that it is fashionable smoking and when they see something like that, it rings a bell to them.

I oppose the annulment.

The Temporary Chairperson (Sen. Murkomen): I want to make this clear so that we move forward – that annulling the regulations does not mean that they will not

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come back. Annulling them for this purpose under this Act means that you return them to the Ministry. Once those issues are addressed, they will come back to us. I hope that is what it means because the Act itself constrained our ability, as a Parliament, to make any changes. They have to go back to same Ministry then come back here. Is that the correct position, Mr. Chairman? We will go through all these and many other provisions call for annulment.

Mr. Chairman, could you address the question as to what happens when we annul a regulation?

Sen. Sang: Mr. Temporary Chairman, Sir, the constraint provided for under the Statutory Instruments Act is that Parliament has no power to amend regulations. It only has power to either approve the regulation in total or annul. In this case, when you talk of annulling, you will be telling the Cabinet Secretary to readdress that.

In terms of the resolutions of the House, we will write to the Cabinet Secretary to tell them that the reason we annulled this regulation is for them to address certain issues. This is what we have done with other regulations like the Transport Regulations. Sometimes, it does not even take more than a week or two before the revised regulations are gazetted. Therefore, as a Committee, the regulations that we are proposing to adopt are the ones that we agree with in their entirety. The ones we want annulled are the ones we have reasons that they should be revised and re-gazetted afresh.

The Temporary Chairperson (Sen. Murkomen): I hope that is clear. Let us hear from Sen. Wako. Then, we will hear from Sen. Wetangula and then Sen. Mugo.

Sen. Wako: Mr. Temporary Chairman, Sir, I apologise for not going through these regulations properly. However, I seek some explanation on annulment of Regulation No.3. How does it affect the First Schedule which is pursuant to, amongst other regulations, Regulation 3? In other words, does it mean that the whole Schedule will be annulled or just part of it? I just want to be clear on that.

The Temporary Chairperson (Sen. Murkomen): I do not know if I am allowed, as the Chairman, to ask from here. However, Mr. Chairman, you said that the reason for annulling it is because there are no pictures. However, there are pictures in the Schedule. What does that mean?

Before the Chairman responds, let us listen to Sen. Wetangula then we shall hear Sen. Mugo.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairman, Sir, I have an issue with what Sen. Sang said. My understanding is that the regulations come to the House. We either approve them as they are or if we take issues with any, we move a deletion. If we think that the originating Ministry needs to recast, then we completely annul a regulation. We can also report that we have annulled another one and tell them to recast it in another way. That is my understanding. That is how we have done in the previous engagement. When you take them back and ask that they are re-done, we shall be turning this House into a rubberstamp. This House is not a rubberstamp. The purpose for which delegated regulations come to the House is for us either to approve, alter or delete them.

The Temporary Chairperson (Sen. Murkomen): Sen. Sang, you will answer that. Before you do so, let us listen to Sen. Mugo.

Sen. Mugo: Mr. Temporary Chairman, Sir, what I have is more or less what the Senate Minority Leader has said. We should make it clear that it is not completely annulled. We should make it clear that it will be recast as opposed to leaving it blank.

The Temporary Chairperson (Sen. Murkomen): I want to say what I have heard before the Chairman responds. I want everybody to be attentive to this, especially the Senate Minority Leader. Sen. Wetangula because I talking about something which he said. Therefore, I want us to be clear.

What I heard from the Chairman is that any regulation that we annul will be accompanied by reasons for that decision. The reasons for that decision are what will dictate to the Cabinet Secretary what to do. That is why when the Chairman says that we annul, he goes ahead to give reasons for that so that they are accompanied alongside the report.

To respond to Sen. Mugo, once the reasons are taken back, they will come back to us and if necessary, with amendments. If the Cabinet Secretary is satisfied that annulling is enough that will be all. Where reasons have been given on what needs to be done, amendments have to come back to the House. Is that so, Mr. Chairman?

(Sen. Sang nodded)

That is clear.

Sen. Orengo: Mr. Temporary Chairman, Sir, the problem is that – I have a lot of sympathy with Sen. Mugo – sometimes when you make regulations, there is a structure whereby one regulation may be dependent on another. If you begin to cannibalise the regulations piece by piece, the result of what you have done may not make a lot sense. For example, from what I understand from what Sen. Mugo said is that the question of pictograms is one way of controlling the tobacco industry and products. If on that very issue you have annulled a regulation and, to that effect, the Cabinet Secretary does not bring back the changes with a new version, it means that the work that you have done amounts to nothing.

Therefore, I thought that the best way of doing was that if you do not approve any of the regulations, then the entire regulations must go back to the Cabinet Secretary to look at them again before bringing them back. When you do piecemeal work to do with a subsidiary legislation, sometimes you may find that the core regulation is not handled. For example, in election petition before, you will find some regulations which are the core regulations in terms of election petitions. If they are annulled and then the Cabinet Secretary says that he or she will proceed on the basis of the ones approved and leave out those not approved, then, probably even the object of the Act may be defeated. I think Sen. Mugo is talking with so much passion because I know what she has done in the industry. She was being fought very hard by the tobacco industry. I know that they will never let an issue like this one go without some participation.

I plead that we need to look at the Regulation as whole rather than annulling a Section and then say that we have approved some, but not others. It is good to look at the entire superstructure as it were based on the Act.

The Temporary Chairperson (Sen. Murkomen): Mr. Chairman, following that submission by Sen. Orengo, I am also wondering about that because I have the document that will assist us in this process. You said that we should annul Regulation 3. However, when it comes to the Schedule which is based on that Regulation, you said that it be part of the regulations. How will that be if Regulation 3 as a whole is annulled yet if you go to the Schedule, it is intact and we are asked to preserve it so that it is maintained?

Mr. Chairman, I have a question on my desk and which many Members have also been asking publicly. Do you not think that you may need more time?

The Senate Minority Leader (Sen. Wetangula): Normally, when you make an amendment then sometimes follows consequential amendments to have the regulations or Act to make sense. That is why these two gentlemen are sitting side by side with you. It is them and the editors who will then run through the Bill and see whether by amending or annulling one regulation, it spirals to others that need to be affected and altered as well.

The Temporary Chairperson (Sen. Murkomen): I do not know whether I should be debating as the Chairperson. The contradiction here is that the Chair of the Committee is giving an explanation that we are annulling because pictures were not provided. When we look at the section that is being annulled, the Schedule provides those pictures. That explanation, therefore, becomes contradictory to start with. Also, the Committee has expressly said that we should annul the regulation, but approve here in the House the specific Schedule which is hinged on that regulation. That contradiction is there.

Sen. Orengo: Mr. Temporary Chairperson, Sir, if you look at the Schedule on page 1160, it is anchored on several rules or regulations. This means that in coming out with that Schedule there was consideration of all those regulations together. But now if on account of one regulation, which is annulled, there is a Schedule which is dependent on several regulations, then the final product will not make sense. It will become irrational and not at all reasonable. So, I think we should hear the suggestion by Sen. Mugo, particularly to do with this issue of tobacco. This is because there is a war out there that we must win.

The Temporary Chairperson (Sen. Murkomen): Sen. Sang, I am actually convinced that as the Chair you might need more time. What do you think? Can you convince us?

Sen. Sang: Mr. Temporary Chairperson, Sir, based on the submissions by a number of Senators, we have no objection, as a Committee, to that. Pointing out that particular issue on pictograms, it clearly indicates that there could be need for some tidying up to be done.

But just to address myself to the issue raised by Sen. Wetangula on annulment, we have two sets of regulations. The example that I would give is the Public Finance Management Regulations where they require the approval of Parliament before they are gazetted and take effect. In scrutinizing such regulations, the House would have the liberty to make amendments and forward them to the regulation making authority.

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Regarding the other set of regulations under the Statutory Instruments Act, Parliament is only given two options; either you approve or annul. As you annul, you do so with reasons. Those are the issues that we were going to present in each of those regulations that we propose to annul. We would say: “We annul regulation this, because of X, Y and Z.” When you communicate to the regulation making authority, then you will be telling them that the reason behind the annulment of that regulation is because of specific issues that we have pointed out. That is fairly provided for under our Report.

However, based on the submissions of a number of us, I would then ask Sen. Mugo and any other Senator who is particularly keen on this, to look at the Report, because it was tabled in the Senate and is available. We, as a Committee, will also put the various sections that we propose to annul, provide an explanation and have this business rescheduled again in the Order Paper. We have no objection to that.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairperson, Sir, as we do so, the Senate must be convinced both in the narrative and pictorials; that these regulations and pictures make sense. I am sure that the Government has the ability to bring here real pictures other than the things that we are seeing. When you are told that tobacco use causes premature births, cancer or death and you see a diagram like this one you will not understand what this means.

(Sen. Wetangula displayed the document to the other Senators)

We can be availed real pictures that touch the conscience of the Members, so that as they go on debating and approving, they are seeing the distortions that tobacco cause in your face, stomach and whatever. But pictures like these cannot create any impression to anybody about what smoking tobacco does.

The Temporary Chairperson (Sen. Murkomen): We should now close this matter.

Sen. Sang: Mr. Temporary Chairperson, Sir, that addresses the issue that had been raised by Sen. Wako; that one of the challenges that we have with the regulations is those kinds of pictures. If you look at the pictorials that are provided, behind them you need the technical repositories and digital storage. You need the actual pictures. As I speak, if you look at those blurred pictures, you cannot tell what exactly they are. The Cabinet Secretary and the Ministry have not provided us with clear pictorials. That is the reason we were proposing to annul Regulation 3, together the pictorials, so that they are put together in a manner that they can communicate what it is that they exactly want to communicate.

Mr. Temporary Chairman, Sir, we accede to putting this matter forward to a day that it can be addressed appropriately.

The Temporary Chairperson (Sen. Murkomen): Therefore, you should move for us to report progress.

Sen. Mugo: Mr. Temporary Chairperson, Sir, I thank the Chair of the Committee for that magnanimity. I just want to inform him – and I hope he will take my information

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– that they could contact Prof. Odhiambo, who is really an authority in this. He is also the Chair of the national tobacco prevention committee, which is part of the Ministry of Health. He could address the Committee and show the pictorials and process of lungs turning to coal.

The Temporary Chairperson (Sen. Murkomen): Thank you very much. The Chair needs a little more time for consultations as has been proposed.

Chair, please, move that we report progress.

PROGRESS REPORTED

TOBACCO CONTROL REGULATIONS, 2014

Sen. Sang: Mr. Temporary Chairman, Sir, as I move I ask Sen. Mugo, knowing her past experience and work within the Ministry if she can also talk to the Cabinet Secretary. We will invite the Ministry and if they feel like sending us the professor, that would make more sense to us so that we can have that engagement with the Ministry. That should help the Committee.

I beg to move that the Committee of the Whole report progress on its consideration of the Tobacco Control Regulations, 2014 and seek leave to sit again on a day to be appointed by the Speaker.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

TOBACCO CONTROL REGULATIONS, 2014

Sen. Murkomen: Hon. Speaker, I beg to report that the Committee of the Whole has considered the Tobacco Control Regulations, 2014 and seeks leave to sit again tomorrow.

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

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

Sen. Chelule seconded.

(Question proposed)

(Question put and agreed to)

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

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

**THE NATURAL RESOURCES (BENEFIT SHARING)
BILL (SENATE BILL NO. 34 OF 2014)**

The Temporary Chairperson (Sen. Mositet): Hon. Senators, we are in the Committee of the Whole to look at the Natural Resources (Benefits Sharing) Bill (Senate Bill No. 34 of 2014).

Clause 3

Sen. (Dr.) Zani: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 3 of the Bill be amended in subclause (1) by inserting the phrase “natural resources as defined in Article 260 of the Constitution including” immediately after the words of “the exploitation of”.

Mr. Temporary Chairperson, Sir, the reason for this is that there is an addition of natural resources to clarify that specific law. There is a direct reference to what the issue is and then at the end put “including” as defined in Article 260 of the Constitution. The reason for this amendment is that during public participation, there was a feeling that some of the specific natural resources had been left out.

Moreover, Article 260 of the Constitution directly gives reference to these particular natural resources. So, we intend to amend that specific Clause so that not only do we have the natural resources mentioned, but also make reference to Article 260 which is more inclusive.

We also have an amendment from the Chairperson of the Committee on Land and Natural Resources. There is another set of amendments where they have also indicated that they needed to add in that particular Clause two more specific areas; that is energy and wind.

(Question of the amendment proposed)

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The Temporary Chairperson (Sen. Mositet): Okay, do we have an amendment by the Committee?

Sen. (Dr.) Zani: Mr. Temporary Chairperson, Sir, there is also an amendment from the Committee. The Committee includes two new areas of natural resources. They added energy and wind.

The Temporary Chairperson (Sen. Mositet): Do you have the authority from the Chairperson of the Committee?

Sen. (Dr.) Zani: Yes, I do. I have today's Supplementary Order Paper and the Committee Chair has signed against this particular Order. That he is happy for me to move the amendments on behalf of the Committee. I also had earlier discussions with both the Chairperson and the Vice Chairperson of the respective Committee.

The Temporary Chairperson (Sen. Mositet): Proceed, Senator. You have to indicate whether you are withdrawing some amendments.

Sen. (Dr.) Zani: Mr. Temporary Chairperson, Sir, is it for Clause 4 or are we still in Clause 3?

The Temporary Chairperson (Sen. Mositet): We are on Clause 3. Just approach the table.

Sen. (Dr.) Zani: No, that is okay. I beg to move that Clause 3 be amended as proposed so that that part of the Bill concurs with what is in the Order Paper. This is one of the amendments from the Committee.

(Sen. (Dr.) Zani consulted the clerks-at-the-table)

(Sen. (Dr.) Zani stood to speak from the Government side of the House)

The Temporary Chairperson (Sen. Mositet): Senator, at what point did you cross to be on that side?

Sen. (Dr.) Zani: Mr. Temporary Chairperson, Sir, it will be easier from here than from there because of the consultations.

An hon. Senator: But it is a point of order.

Sen. (Dr.) Zani: Okay, I see that.

The Temporary Chairperson (Sen. Mositet): So, you have to cross properly.

Clause 3

Sen. (Dr.) Zani: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Section (a) of Clause 3 be dropped and that we incorporate Section (b) by inserting the following new paragraphs immediately after paragraph (g)-

(h) geothermal energy;

(i) wind

For the benefit of the Members who are here, I want to briefly explain how we are doing the amendments. We have two sets of amendments; my amendments and those

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from the Committee. It was going to be difficult for us to move the separate amendments when it comes to blending the Bill because we have two sets of amendments. We have consulted and amalgamated the various amendments. Therefore, for these amendments to carry over and be systematic, certain aspects of what the Committee had put as amendments are being dropped, as long as they had already been considered by the other team.

The Temporary Chairperson (Sen. Mositet): Since you have the Authority from the Chair, you can proceed.

Sen. (Dr.) Zani: Those are the amendments from the Committee for Clause 3.

(Question of the further amendment proposed)

The Temporary Chairperson (Sen. Mositet): You have to indicate that you are doing it on behalf of the Committee.

Sen. (Dr.) Zani: Yes.

Clause 4

Sen. (Dr.) Zani: Mr. Temporary Chairman, Sir, the first part of Clause 4 is my recommendation.

I beg to move:-

THAT, Clause 4 of the Bill be amended by inserting a new paragraph immediately after paragraph (e)-

(f) “sustainable natural resources management” .

In Clause 4, we are giving the specific responsibilities to the way the Bill should operate. It is important to add the area of sustainable natural resources management as one of the key objectives of this specific Bill.

(Question of the amendment proposed)

Clause 5

The Temporary Chairperson (Sen. Mositet): Since there is no amendment, I will put the question at the end.

(Question that Clause 5 be part of the Bill proposed)

Clause 6

Sen. (Dr.) Zani: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 6 of the Bill be amended in sub-clause (1) by inserting the following new paragraphs immediately after paragraph (i)-

(j) build the capacity of local communities in negotiations for benefit sharing and implementation of projects;

(k) prepare national guidelines on benefit sharing in consultation with other sectoral leaders; and

(l) identify, in consultation with sector specific organizations, incentives and benefits to promote the conservation of natural resource.

Mr. Temporary Chairman, Sir, we are amending Clause 6 by including the words: “build the capacity of local communities in the negotiations for benefit sharing and implementation of the projects”. Clause 6 deals with the functions of the Authority. It was felt that it was important that we include that we need to build the capacity of the local communities in the negotiations for benefit sharing and implementation of projects, so that these communities can be aware and continue to be part and parcel of building that capacity.

That amendment also includes another function that we are hoping to add and that is to prepare national guidelines on benefit sharing in consultation with other sectoral leaders. The reason for that amendment is to ensure that certain national guidelines are all in sync and that various amendments, decisions and introduction are not made in an *ad hoc* manner, so that there is more coordination in that area.

Lastly, sub-clause (l) is to identify, in consultation with sector specific organizations, incentives and benefits to promote the conservation of natural resource. The reason for this amendment is to ensure moving forward the promotion of the conservation of natural resources is kept, because most communities tend to utilize the natural resources without having a way of replenishing that resource. For Clause 6, it was felt that adding the functions of the Authority will strengthen the Authority in terms of making sure that the national resources are well utilized.

The Temporary Chairperson (Sen. Mositet): Senator, there are two amendments in that clause.

Sen. (Dr.) Zani: Mr. Temporary Chairman, Sir, the amendments that I have moved are those that were from the Committee, but it is good that I have also covered them because they would have come as my amendments.

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

THAT, Clause 6 of the Bill be amended in subclause (1) by inserting the following new paragraphs immediately after paragraph (i) –

“(j) ensure and promote value addition of natural resources;

(k) promote local content initiatives; and

(l) facilitate environmental rehabilitation activities after the exploitation of a natural resource.

The same clause still deals with the expansion of Authority and the idea is to give them more responsibility. Therefore, the particular amendment at (j) is to ensure and promote value addition of natural resources, so that if any work is to be done on the minerals, it is done by the locals themselves. If there is any value addition to be done on the minerals, it will be done by the community themselves.

Sub-clause (k) is to promote local content initiatives, so that at the end of the day, the local community benefit not only in terms of the resource but also in terms of the money.

Lastly, sub-clause (l) facilitates environmental rehabilitation activities after the exploitation of resource, so that the natural resource is replenished and the community can feel that it is a resource from which they can gain in the long-run rather than in the short-run.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): I will put the question at the end.

Clause 7

Sen. (Dr.) Zani: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be amended—

(a) In sub clause (1) by deleting paragraph (g) and substituting therefor the following new paragraph -

(g) one person nominated by the Kenya Private Sector Alliance (KEPSA);

(b) deleting sub clause (5) and substituting therefor the following new sub clause –

(5) In nominating and appointing persons as members of the Board, the nominating authorities and the Cabinet Secretary shall have regard to the principles of nondiscrimination on the basis of gender, disability, youth and marginalized persons under the Constitution.

Mr. Temporary Chairman, Sir, that particular clause deals with the management of the Authority and the specific details for that particular Authority in terms of the specification of the Authority.

The Temporary Chairperson (Sen. Mositet): Is it your amendment or the amendment of the Committee?

Sen. (Dr.) Zani: I beg to move:-

THAT, the Bill be amended in sub-clause (1) by deleting paragraph (g) and substituting therefor a new paragraph (g)-

(g) one person nominated by the Kenya Private Sector Alliance (KEPSA).

Initially, we included the Kenya Manufacturers Association in the Bill, but during public participation, it was felt they might not necessarily be the overall encompassing organization. Therefore, we needed somebody or organ that was going to be more direct. The proposals that were given were to incorporate KEPSA, but as I move this amendment, I know that there is another amendment from the Committee that will cancel this particular amendment. We have had a discussion and decided that we leave this as something specific to be dealt with at the organizational level.

The second part of the amendment is ---

The Temporary Chairperson (Sen. Mositet): So, are you withdrawing?

Sen. (Dr.) Zani: Yes, I am withdrawing an aspect of it. As I move the one for the Committee, it will negate this particular one.

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The Temporary Chairperson (Sen. Mositet): You have to state what you are withdrawing so that it goes on the HANSARD.

Sen. (Dr.) Zani: I am withdrawing part (a). Then, I plead that we incorporate that particular amendment from the Committee.

The second part of the amendment is deleting the whole of sub-clause 5 and substituting therefor the following new sub-clause:-

“In nominating and appointing persons as members of the Board, the nominating authorities and the Cabinet Secretary shall have regard to the principles of nondiscrimination on the basis of gender, disability, youth and marginalized persons under the Constitution”.

Mr. Temporary Chairman, Sir, when we debated in this House, there were feelings that in terms of the constitution of the Board, that these specific groups had been left out. I remember that Sen. Omondi was very specific that we need to be more inclusive. This tries to expand the Board so that we are more inclusive. However, even as I move this amendment, I also wish to add that now at the end of that sentence, we shall have “and the requirements of Chapter Six of the Constitution”. This amendment came from the Committee and I felt that it is important to also have aspects of Chapter Six in terms of leadership and requirements of leadership be incorporated in the members who will be part of that particular board.

Thank you, Mr. Temporary Chairman, Sir,

The Temporary Chairperson (Sen. Mositet): Sen. (Dr.) Zani, please move the amendment by the Committee as well.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairman, Sir. I beg to move:-

THAT, Clause 7 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “environment” appearing in paragraph (b) and substituting therefor the words “natural resources”;

(b) in sub-clause (1) by deleting the words “the Kenya Association of Manufacturers” appearing in paragraph (g) and substituting therefor the words “a recognized umbrella body representing the interests of the private sector in Kenya”; and

(c) in sub-clause (5) by inserting the words “and the requirements of Chapter Six of the Constitution” at the end of the sub-clause.

The Committee had recommended that in Clause 7 (a), the Bill be amended by deleting the word “environment” appearing in paragraph (b) and substituting therefor the words “natural resources”. This is because natural resources are going to be broader than just leaving it at environment.

In (b), in sub-clause (1), they recommended that an amendment be made by deleting the words “the Kenya Association of Manufacturers” appearing in paragraph (g) and substituting therefor the words “a recognized umbrella body representing the interests of the private sector in Kenya”. As I had explained earlier, the reason is that we give them a chance to nominate the best organization but also be very careful that they are able to identify such an organization. This is because we thought that instead of

telling them which organization because they know the organizations better. They should be left to make that recommendation to us.

In (c), the Committee recommended that we amend the Bill in sub-clause (5) by inserting the words “and the requirements of Chapter Six of the Constitution” at the end of the sub-clause. This is so that we incorporate the values enshrined in Chapter Six of the Constitution in ensuring that in this particular management of the Authority, we have quality leadership that can steer this country to greater heights. Therefore, as I amend, I drop (c).

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

The Temporary Chairperson (Sen. Mositet): Sen. Wako, please wait for me to propose the question.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Please, proceed, Sen. Wako.

Sen. Wako: Thank you, Mr. Temporary Chairman, Sir. I just want clarification and to confirm whether my understanding is correct. It appears as if paragraph (g) was initially the Kenya Association of Manufacturers (KAM) and the Chairperson felt that the Kenya Private Sector Alliance (KEPSA) was a better representative, and that the ultimate now is to delete both of them and leave it as “a recognized umbrella body representing the interests of the private sector in Kenya.” I would like to know whether my understanding is correct and that we are not having both KEPSA plus another recognized body representing the interests of the private sector in Kenya.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairman, Sir. That is the position. This is because, initially, when we went through the negotiations especially in sectors that are very well formed, it is very difficult to get a representative umbrella body that everybody agrees with. In the initial instances, we put Kenya Association of Manufacturers as the representative body but later on, when we had more consultations with stake holders, they said that KEPSA seemed to be the right one. After that, we decided not to get into the dynamics of which organization will be the representative that will be nominated and left this to them by coming up with an amendment that will allow them to do this within an umbrella body that is agreeable among themselves.

Thank you, Mr. Temporary Chairman, Sir.

The Temporary Chairperson (Sen. Mositet): Thank you, Sen. (Dr.) Zani. That is very clear. The question will come at the end, so let us proceed to the next clause.

Clause 8

The Temporary Chairperson (Sen. Mositet): There are no amendments to this clause. Therefore, we will vote on it at the end.

(Question, that Clause 8 be part of the Bill, proposed)

Clause 9

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Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairman, Sir. I beg to move:-

THAT, clause 9 of the Bill be amended in paragraph (b) by deleting the word “ten” appearing immediately after the words “and at least” in the opening paragraph and substituting therefor the word “seven”.

This particular clause deals with the whole issue of the person who is going to be qualified to be the Chairperson of this particular board. If we look at the number of years of experience, the comment that came when we were debating in the House is that 10 years of experience means that we will not have any youthful person. This is because, by the time somebody has 10 years of experience, we might end up with people who are not very young. There was a feeling that it is important to incorporate the youth. We decided to amend the clause by reducing the years of experience from 10 to seven years. We also thought that somebody with seven years of experience is also in a good position to contribute to such a board.

Thank you, Mr. Temporary Chairman, Sir.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): There are no amendments to Clauses 10, 11,12,13,14,15,16,17,18,19,20,21,22 and 23. Therefore, we will vote for them at the end.

(Question, that Clauses 10, 11, 12, 13 ,14,15,16,17,18,19, 20,22,22 and 23 be part of the Bill, proposed)

Clause 24

Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairman, Sir. I beg to move:-

THAT clause 24 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “in each year” appearing immediately after the words “affected organizations”; and

(b) in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c)-

(d) the impact of the exploitation on the people and the environment

This is an amendment from the Committee. This specific clause deals with the whole issue of collection of royalties. It gives the work of the Authority direction by ensuring that they have the power to determine the amounts that should come from the royalties and that in making the determination, they can think about the overall capital and all the issues that come in that are related to that particular work. By deleting the words “in each year” appearing immediately after the words “affected organizations”, there will be consistency and the timing of when the reports are going to be given is very clear. That amendment is actually to ensure that at the end of the day, the time limit and specification has been adequately put into place.

In (d), it is to ensure that the impact of exploitation of the people and the environment is also taken into consideration because that is an important aspect that we had not brought out clearly before the amendment.

(Question of the amendment proposed)

(Question that Clause 25 be part of the Bill proposed)

The Temporary Chairperson (Sen. Mositet): The question will come towards the end.

Clause 26

Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairperson, Sir. I beg to Move:-
THAT, Clause 26 of the Bill be amended-

(a) in sub-clause (1) by inserting the words “under this Act” immediately after the words “revenue collected”; and

(b) in sub-clause (6) by inserting the words “in consultation with the lead agencies for each natural resource” immediately after the words “Authority shall”.

Mr. Temporary Chairperson, Sir, the reason for this is that in the earlier version of the Bill, it had not been indicated that the specification especially for Clause 26 that is specifically dealing with the revenue that has to be collected and that the Authority is the one with the mandate to put this into place had not been clarified. By inserting the words “under this Act” ensures there is no confusion about which Act the Authority is using in the application of the revenue that is being collected. As we might know from the Bill, the actual collection will be done by the Kenya Revenue Authority (KRA). The clarification comes to make sure this regulation is specifically for the collection of revenue from natural resources.

The reason for amending Sub-clause 6 is because we felt that most of the time in the area of natural resources, lead agencies know and have a lot of information. The previous Clause had not been incorporated with a view of tapping the knowledge from these lead agencies. The amendment seeks to bring them on board.

Thank you.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): I will put the question towards the end.

*(Question that Clauses 27, 28 and 29
be part of the Bill proposed)*

The Temporary Chairperson (Sen. Mositet): I will put the question towards the end.

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Clause 30

Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairperson, Sir. I beg to Move:-

THAT, Clause 30 of the Bill be amended in Sub-clause (2) by inserting the words “within thirty days of its execution” immediately after the word “Authority”.

This clause is dealing with how every benefit sharing agreement will be processed. It was felt that if we do not give a timeline, we might have agreements that go on for very long. By incorporating that the process will be concluded within 30 days of its execution, this will help these agreements to be finished quickly. Also, there is no chance to introduce new changes that might not necessarily be part of the formal agreement.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): I will put the question at the end.

Clause 31

*(Question that Clause 31 be
part of the Bill proposed)*

The Temporary Chairperson (Sen. Mositet): The question will come at the end.

Clause 32

Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairperson, Sir. I beg to Move:-

THAT, the Bill be amended by deleting Clause 32.

The reason for this is that when we printed the final copy of this Bill, we realised that Clause 32 already appeared elsewhere in the Bill so, it completely replicates another section of the Bill.

Sen. Wako: Mr. Temporary Chairperson, Sir, I think we had passed it. It is just that I had wanted at the appropriate place for her to guide or inform me whether the phrase “lead agency” is defined in the Act. It is not in the main section which makes definitions but it may be in the body of the Act. I am just requesting for a confirmation because we are now using it quite a bit.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairperson, Sir. This amendment came from the Committee, and I think it was the first time that it was coming as a clause that is being mentioned in this Bill. I think we took it for granted that probably everybody will know what lead agencies are. It is not yet defined in the preliminary definitions.

(Question, that Clause 32 be deleted proposed)

The Temporary Chairperson (Sen. Mositet): I will put the question at the end.

(Question that Clauses 33, 34, 35 and 36)

be part of the Bill proposed)

The Temporary Chairperson (Sen. Mositet): I will put the question at the end.

Clause 37

Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairperson, Sir. I beg to Move:-

THAT, Clause 37 of the Bill be amended in sub-clause (1)(b) by deleting subparagraph (i) and substituting therefor the following new subparagraph – (i) the financial statements of the Authority including—

(a) a statement of the income and expenditure of the Authority during that year; and

(b) a statement of the assets and liabilities of the Authority as at the last day of that year;”

Mr. Temporary Chairperson, Sir, this clause deals with accountability with regard to the statements that the Authority will be giving. This amendment has been inspired by the comments made by Sen. Mutula Kilonzo Jnr. on the Floor of the House. He said that we have to be very specific that at the end of the day a statement of the income of expenditure and income of the Authority should be done and tabulated for that year. These statements should then be submitted to both the Senate and the respective Ministry or Cabinet Secretary (CS).

A statement of assets and liabilities of the Authority as of the last day of that year should also be listed as part of general accountability. That way, it is easy for any person doing an audit to understand which assets and liabilities exist and, therefore, make any necessary interventions at the right time.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): I will put the question at the end.

*(Question that Clauses 38, 39, 40 and 41
be part of the Bill proposed)*

The Temporary Chairperson (Sen. Mositet): I will put the question at the end.

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

The Temporary Chairperson (Sen. Mositet): I will put the question at the end.

Clause 2

Sen. (Dr.) Zani: Thank you, Mr. Temporary Chairperson, Sir. I beg to Move:-

THAT, Clause 2 of the Bill be amended by inserting the following new definitions in their proper alphabetical sequence-

“Authority” means the Benefit Sharing Authority established under section 5;

“Cabinet Secretary” means the cabinet secretary for the time being responsible for matters relating to natural resources.

Through the deliberations and public participation and from the debate in the Senate, we realised that the docket of the director had not been clearly stipulated and, therefore, this amendment comes to make it very clear that this should be the Cabinet Secretary for the time being responsible for matters relating to natural resources so that even if there are changes in terms of the Ministries and their naming, the right Ministry is aligned to issues of natural resources and in the execution of this Bill.

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

THAT Clause 2 of the Bill be amended by inserting the following new definitions in proper alphabetical sequence – “futures fund” means monies set aside from the sovereign wealth fund for future generations; “natural resources fund” means monies set aside from the sovereign wealth fund for social and economic development and rehabilitation of depleted natural resources.

Mr. Temporary Speaker, Sir, further the Committee recommended that that the Bill be amended by:-

By inserting the following new definitions in their proper alphabetical sequence, “Authority” means the Benefit Sharing Authority established under Section 5 and secondly, “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to natural resources.

(Question of the amendments proposed)

(Question that the Title be part of the Bill proposed)

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

The Temporary Chairperson (Sen. Mositet): We have come to the end of the process, and I would like to put the question. However, the Mover can report progress.

Sen. (Dr.) Zani: 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 Natural Resources (Benefit Sharing) Bill (Senate Bill No. 34 of 2014)

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT**THE NATURAL RESOURCES (BENEFIT SHARING) BILL
(SENATE BILL NO. 34 OF 2014)**

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered The Natural Resources (Benefit Sharing) Bill (Senate Bill No. 34 of 2014) and seeks leave to sit again tomorrow.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said Report.

The Temporary Speaker (Sen. Mositet): Who is seconding you?

Sen (Dr.) Zani: Mr. Temporary Speaker, Sir, I would like to request Sen. (Dr.) Ong'era to second.

Sen. (Dr.) Khalwale: Gender! Gender!

Sen. Ongera seconded.

(Question proposed)

(Question put and agreed to)

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

BILL*Second Reading***THE COUNTY ALLOCATION OF REVENUE BILL
(SENATE BILL NO. 5 OF 2015)**

(Sen. Billow on 16.06.2015)

(Resumption of Debate interrupted on 16.06. 2015)

Sen. Orengo: On a point of order, Mr. Temporary Speaker, Sir. The Clerk read the next order too fast. I had already indicated that I wanted to rise on a point of order. Just as a matter of cleaning the record of the House, normally when Members comment even when they are not on their feet properly, what they say sometimes gets on the HANSARD. Sen. (Dr.) Zani had clearly indicated that Sen. Ong'era was the one to second but then there was another Senator who was shouting "gender, gender". Can that record be cleared so that in the future somebody reading the HANSARD will not think that there was a Senator called gender?

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The Temporary Speaker (Sen. Mositet): I believe it was properly seconded by Sen. Ong'era.

Sen. Ndiema, you had a balance of five minutes. You can utilise them.

Sen. Ndiema: Thank you. Mr. Temporary Speaker, Sir, for giving me time to continue from where I had left.

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

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

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

Sen. Kanainza: On a point of order, Mr. Temporary Speaker, Sir. Looking at today's Order Paper, after Order No.12 which we have just completed, we were supposed to go to Order No.13 which is the Reproductive Health Care Bill. However, we have moved to Order No.14.

The Temporary Speaker (Sen. Murkomen): Thank you, Sen. Kanainza. I understand the confusion caused by having many Order Papers on your table. However, there is a Supplementary Order Paper.

Sen. Ndiema, you may proceed.

Sen. Ndiema: Mr. Temporary Speaker, Sir, as I said yesterday, the amount of funds that were allocated to the counties is a far cry of what counties require. Nevertheless, whatever has been availed should run counties. I called upon county governments to utilise the funds prudently. This is because what we are getting from most counties and the report from the Auditor-General is that there is a lot of misappropriation and misuse of funds.

Mr. Temporary Speaker, Sir, before we adjourned yesterday, we talked about the Fuel Levy Fund. We are punishing county governments when we allocate them only 15 per cent of the Fuel Levy Fund and leaving a whopping 85 per cent to the national Government. A majority of the road network in this country are in the rural areas in counties. Currently, there are roads in the counties which need repair and maintenance. Come next year, we should – as a Senate – struggle to increase the amount to the level that is commensurate with the responsibilities that have been given to counties to maintain roads.

Mr. Temporary Speaker, Sir, polytechnics are very important especially for our youth. The Government stated that it is committed to ensuring that our youth are empowered. However, this does not seem to be reflected in the allocation of funds for polytechnics. In my county, for instance, we decided to have polytechnics; not village polytechnics. We want to have polytechnics in every ward which are fully equipped with all necessary teaching facilities and tools.

However, resources that have been allocated or transferred to the counties for that function are very little. I would have thought that in the same spirit that we encourage and allocate a lot of funds to the National Youth Service (NYS), we should also look at the youth who do not join the NYS and allocate funds to them. It is time that we consider

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that the NYS has a branch or a unit in every county so that resources allocated to it go to counties.

Mr. Temporary Speaker, Sir, there is also an allocation for leasing of equipment. As you are aware, it is a subject that is already under inquiry at county assemblies on whether certain things were done properly. If we approve that wards should lease property and the budget goes to the counties, I am not sure whether somebody will not to claim that the Senate had assented to the programme. An amendment should come at an appropriate stage, maybe, the Committee Stage, to pronounce that the funds are allocated for hospital equipment in counties. That will ensure that the question of whether it will be leased or purchased is obviated so that we do not get entangled in that.

Mr. Temporary Speaker, Sir, another issue, as I had said yesterday, is about agriculture. Allocation for procurement of grain and fertiliser is much less than what was spent this financial year. That means that as move to harvesting period – there is likelihood of a bumper harvest this year – we will end up with a problem of the Government not being able to procure maize---

(Sen. Ndiema spoke off record)

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

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to support this Bill. However, I am supporting it purely for purposes of record. I would like it to be recorded in the HANSARD that we spoke, the Government heard but it chose to hide in the “Lower House”, ignored the wisdom of the “Upper House” and the country did not move at the pace it could have moved. I say this because in the first year, when we did the Division of Revenue Bill, we were ignored. We went to the Supreme Court and threatened to amend the Constitution. That caused that Bill to be brought here in the second year. Now, in the third year when we thought things were moving, we ended up in a mediation which was ignored. However, they have heard and history has recorded that we have said.

Mr. Temporary Speaker, Sir, I would like to start, thereafter, by announcing to the people of Kakamega that the Senate of the Republic of Kenya has successfully agreed and supported my request that Kakamega County, for the next financial year, be given a whopping Kshs8,908,229,519. I thank colleagues for that. Just like you supported the figure for Kakamega County, I assure the people of Elgeyo-Marakwet that I will also support the figure for that county just like I would do for all other counties.

Mr. Temporary Speaker, Sir, each county government’s allocation under subsection 1 shall be transferred to the respective County Revenue Fund in accordance with a payment schedule approved by this Senate and published in the Kenya Gazette by the Cabinet Secretary. It is important that this provision in this Bill be read out to the public the way I have done. This is because when you meet governors in a public function, they say that “The figures that Sen. Orenge is talking about are his. We have not seen the

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money but it is coming.” Let the people of Siaya know that the money we approve today is money that will be sent to Siaya County just like in all other counties.

Mr. Temporary Speaker, Sir, I want to specifically comment on clauses. Clause 5 is about Conditional Allocations to County Governments. The first conditional allocation is to Level 5 hospitals. I take this opportunity to thank Sen. Kagwe, Senator for Nyeri County and Sen. Elachi who joined in mediation with National Assembly and managed to, at least, secure these conditional funds. I cannot just leave it there. The public must know that the Conditional Fund that I am talking about has been given to 11 hospitals in Kenya.

The 11 hospitals include Embu, Garissa, Kakamega, Kiambu, Kisii, Kisumu, Machakos, Meru, Mombasa, Nakuru and Nyeri former provincial general hospitals. I want to emphasize to the people of Kakamega that over and above the Kshs8.9 billion that I have talked about, there will be specifically Kshs342 million that will go to the former Kakamega Provincial General Hospital. I want to urge the people, especially the Members of the County Assembly of Kakamega, to put pressure on the Governor, because the first and second allocations that were meant to serve the former provincial hospital in Kakamega are still lying at the National Bank of Kenya. This money is now adding into it and is approaching almost a billion, and the hospital has got a myriad of problems.

Mr. Temporary Speaker, Sir, I want now to comment on the second conditional allocation, which is, free maternal health care. When the President announced free maternal health care, our biggest concern was how those services will be funded. The national Government has responded by giving this conditional allocation, and I must congratulate them. But when you analyze the figures, you become very angry. In this allocation, the County Government of Kakamega has been given Kshs214 million compared to the County Government of Kiambu with Kshs224 million. Kiambu has, therefore, been given more money than Kakamega. Why is this wrong? This money is supposed to serve maternal child health.

Between Kakamega County and Kiambu County, which one has more deliveries and children? It is Kakamega. Why are they giving more money to Kiambu at the expense of Kakamega which records more deliveries and has, therefore, more children? This is not right. They think that we are not able to analyze this document. We are analyzing it and reminding them that some of us are health professionals. I know, as reported last year, that the birth rate in Kakamega is 45 and the one in Kiambu is 38. To show how great the injustice is, because I know that you belong to the Jubilee arm, that injustice is not just against Kakamega County. It is even against counties in your region. Kericho has got one of the highest birth rates in this country, at 54, but you will not believe that it is receiving only Kshs98 million for this service. Kiambu is getting more yet it has got less than half of the deliveries in Kericho.

This being a House of equity, we must raise our voices, so that the people in the national Treasury know that we understand these things and they will not keep on hiding. This is not a joke. Murang’a has got a birth rate of only 24 compared to Vihiga which has got a birth rate of 37. When you go to the allocation, it is so laughable that Murang’a

County is being gifted with Kshs80 million while on the other hand, Vihiga County which has got twice the birthrate, is being given a mere Kshs67 million. Who are we serving?

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. I do not want to take the oomph from my colleague, the Senator. But I just want to point out that percentage is one thing and numbers are another. You can have a very high percentage of a very low number. So, you need to compare oranges with oranges.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I think my good friend, the Senator, should have the patience to live with facts, especially when they are coming from a doctor of Medicine. A birth rate of 45 means that for every 1,000 women, there are 45 deliveries. In Kiambu, it is 37. When you now factor it into the general population, Kakamega has more people than Kiambu. So, you cannot run away from it. People are just practicing bad governance. Let me not concentrate on that; you can challenge me in your own contribution.

Mr. Temporary Speaker, Sir, the next thing that I want to talk about is the conditional allocation to compensate health facilities for foregone user fees of revenue. This is another area where Members might again need to know that the national Government is shortchanging the county governors. "Foregone user" means that if the national Government has stopped any little levies, for example, Kshs20 for a card, Kshs50 for a laboratory test and so on, then it is supposed to take to that hospital the equivalent amount, as if those people had paid.

If I use my county as an example, Kakamega County is being given Kshs38 million for the whole year, yet in practice, it collects Kshs18 million every four months, which translates to Kshs54 million a year. So, if Kakamega had been allowed to be managed the way we were managing it – and I have worked there for several years – it was going to run better than when the Government sends them the Kshs38 million. But now it ends up sending Kakamega less money. That applies across all the hospitals.

Mr. Temporary Speaker, Sir, regarding conditional allocations for leasing of medical equipment, the Government after dilly dallying has finally brought that money. My advice to them, because it is not too late, is that you are going to waste money by buying equipment and taking it to, for example, Lamu or Kathiani where I have worked. They will simply not be able to use that equipment for two reasons; they do not have capacity and human resource. So, the wise thing for the Government to do is that instead of burning all these billions buying them, let them first equip the 11 Level 5 hospitals in the country, so that people in Nyanza region can go to Kisumu and others to Kisii. Some of those in western region can go to Moi Teaching and Referral Hospital, Eldoret, and others to the former Kakamega Provincial General Hospital. That is the way to do it.

Mr. Temporary Speaker, Sir, I now want to speak to the conditional allocation of the County Emergency Fund. My able Chairman of the Mediation Committee, Sen. Kagwe, I think we won. Regarding the Kshs4.4 billion which hon. Mutava Musyimi thought he had defeated us over, we faced Dr. Kamau Thugge in the eye, and I am glad that he has eventually included this money. Governors will now have money for emergencies on the spot.

We must applaud Dr. Kamau Thugge for respecting the Senate. I also want to challenge him that in the next financial year – or even now if they can rearrange – that there is no point giving a uniform Kshs93.6 million for emergency for all counties. The principle of equity must also be applied on emergency funds. The bigger counties are more likely to have more emergencies than the smaller counties. You cannot expect Machakos County to get the same money for preparing for disasters as Isiolo.

Mr. Temporary Speaker, Sir, moving forward very quickly because my time is almost over, I would like to comment on conditional allocations financed by proceeds of loans or grants from development partners. Members, I would like you to join me in the Third Schedule. This is where, now, the time has come for the Presidency of this country to rotate if this is how people will use the national Government of the Presidency.

The loans from the World Bank, Danish International Development Agency (DANIDA) and the International Monetary Fund (IMF) are elaborated in the Third Schedule. This is unacceptable. Kiambu County has been given Kshs556 million. That is more money than if you put together the money given to Kakamega, Busia, Bungoma and Vihiga. This is shameful. President Kenyatta should think about Kenya, he should not think about Kiambu. We appreciate that the first President, the First Lady and the current President come from Kiambu but we do not appreciate what they are doing. This is unacceptable!

As if that is not enough, the President not only marginalizes the counties that I have mentioned, he is even playing the old dreaded politics of River Chania where they discriminated against the people from Nyeri who fought for Independence. Nyeri has been given very little money compared to what has been given to Kiambu. I cry for Nyeri because Mr. Kibaki was a good man.

(Laughter)

This is not the kind of leadership that we wanted in this country when we voted for the new Constitution. What Members should know is that when you compare the amount of money given to the counties belonging to the communities of the ruling President, it is Kshs1.3 billion meant purely for development while if you---

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

I beg to support. I will work so hard so that we defeat this Government at the next General Election.

The Temporary Speaker (Sen. Murkomen): Order, Sen. (Dr.) Khalwale. Your time is up.

Proceed, Sen. Muthama.

Sen. Muthama: Mheshimiwa Spika wa Muda, ninashukuru sana, lakini moyo wangu ni mzito. Ninasimama hapa bila maneno ya kuzungumza kwa sababu nimewaza baada ya kuusoma Mswada huu, nikaangalia na nikasikiza maneno yaliyotajwa na wenzangu. Lakini sarakasi yenyewe ni kwamba hata tupigania pesa hizi usiku na mchana

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au hata tuzungumze nini, tayari makosa yamefanyika. Kama Biblia inavyosema, pahali umeangukia ndipo unapotakiwa kurudi pale uinukie pale, usimame tena uanze mwendo wako. Nchi hii imelia.

Katika miaka ya ukoloni, Hayati Mzee Jomo Kenyatta na wenzake walipigania ukombozi wa taifa hili. Kenyatta alikuwa na mwito mmoja wa kusema “uhuru wa mwafrika”. Lakini Ngei alikuwa pembeni; Kenyatta alisema “Uhuru” naye Ngei akasema “na mashamba ya Mwafrika, Uhuru na mashamba ya Mwafrika.”

Tegemeo la wananchi wa Kenya kutoka siku za enzi hizio ilikuwa kupigana na kujikomboa. Jambo la kwanza lilikuwa ni kupata mashamba ya Mwafrika baada ya Uhuru. Lakini badala ya utawala wa Hayati Kenyatta kuweka mashamba mikononi ya wale walioyapigania, aliyarudisha kwa Wazungu na yale yalibaki yeye na wenzake wakayakalia na Mwafrika akaachwa akiumia na akakosa njia.

Katika siasa ya Hayati Kenyatta, aliwahidi Wakenya katika kitabu chake cha siasa kwamba kila nyumba katika taifa la Kenya itakuwa na maji ya mferejei itakapofika mwaka wa 2000. Tuliangalia na kutembea juu ya shida katika ya miaka hiyo yote mpaka mwaka wa 2000 lakini badala ya kuwa na maji ya mfereji katika nyumba zetu, maji yalienda zaidi ya kilomita 50 kutoka mahali yalikuwa zamani.

Bw. Spika wa Muda, uongozi wa mheshimiwa Moi akiwa katika ile Serikali iliyounda Serikali ya kwanza, ulisahau ya kwamba Wakenya walipigania Uhuru ili wapate mashamba, wasomeshe watoto wao, wapate matibabu ya kufaa, barabara na mahitaji mengine. Majukumu manne yalikuwa lazima kwa Wakenya. Kama Serikali ya kwanza ya Kenyatta ingewapa Wakenya wakereketwa waliopigania Uhuru mashamba, shida ingetatuliwa. Kama wangewapa wananchi wetu maji wengeweza kulima, kupata chakula na kulipa kodi. Pia, wangeweza kuwasomesha watoto wao na kujenga hospitali zao na leo hatungekuwa pahali tuko. Lakini kwa sababu ya watu wenye vitambi vikubwa ambao walifikiria maslahi yao wenyewe, walitafuna wakiwa wachache lakini leo ninawaambia kwamba watawuna walichopanda.

Sasa hivi kabila la Degodia na lile la Gare wanapigana na watu tisa wameuawa. Tunawapa pole wenzetu kule lakini huu ni mwanzo wa uongozi mbaya. Tutaendelea kuwatafuta wale ambao waliwaibia Wakenya, wasifikiri watakaa kwa amani, watakuwa watumwa katika nyumba zao. Hawezi kutembea bila askari wa kuwalinda. Askari wetu wamekuwa ovyo, wanapigwa pamoja na wale wanaowalinda kwa sababu hakuna mpangilio.

Mheshimiwa Spika wa Muda, tulipitisha Katiba mpya ya Serikali ya ugatuzi ili tujikomoe baada ya Uhuru kwani hakuna chochote kizuri kilichopatikana na tukadhani kwamba ugatuzi utatusaidia. Sasa tuko katika mwaka wa tatu tangu tuanze mfumo wa ugatuzi. Lakini ugatuzi ulikuwa ni kupindua mwenendo wa Serikali Kuu kutoka tujinyakulie Uhuru mpaka leo ili maendeleo yaende mashinani. Cha kuhuzunisha hivi leo ni kwamba kaunti ninayoiwakilisha ya Machakos - tutizame hesabu ya pesa hizi; nasikia ya kwamba Seneta Boni anafanya hesabu vizuri sana lakini hata pesa zinazopelekwa katika kaunti ya Kiambu, hakuna uhakika kwamba zitafanya kazi ambayo zimetengewa.

Sasa imekuwa ni pata shika. Nilimwona Rais akitabasamu apowasilisha Bungeni orodha ya majina ya watu ambao wanatuhumiwa kuhusika na ufisadi na kusema kwamba

amefaulu. Amewahi kuwakamata wezi wote ilhali hadi leo ni Kamau peke yake ambaye amefikishwa mahakamani? Hata mimi nilikuwa katika ile orodha lakini hadi leo sijafikishwa kortini. Nashangaa! Je, tabasamu ya Rais ilikuwa ni kwa sababu ya kubeba karatasi? Wewe ni mtu wa kubeba karatasi na kutabasamu au wewe ni mtu wa kutoa amri na amri hiyo itekelezwe?

Ndugu yangu, Mheshimiwa Orengo, *Senior Counsel* aliitwa pale, tuliandamana naye hadi makao makuu ya EACC. Tulisikiliza mashtaka dhidi yake, hatukupata hata kosa moja na aliruhusiwa kurudi nyumbani Shida ni kwamba, Serikali yote kuu ina vitengo vya kutosha ilhali haviwezi kuwakamata wezi wanaoiba pesa za Serikali. Hivi leo tunashangaa kuona kwamba shamba la Karen – mimi, Mheshimiwa Orengo na Mheshimiwa Khalwale tulipelekwa kortini kwa sababu ya kusema kwamba tunawajua wahusika na kuyataja majina yao. Leo ukweli unadhihirika kama mchana jua likitua katikati, Tobiko anasema kwamba Mheshimiwa Ngilu apelekwe kortini lakini hapelekwi kortini kwa kuiba, anapelekwa kwa sababu ya kutajataja majina ya wale ambao alisema kwamba nyuma yake kuna majina ambayo atayataja nyuma ya majina mengine na dunia itatetemeka.

Bw. Spika wa Muda, ukiangalia vita dhidi ya rushwa na magendo hivi leo, hakuna pahali inaenda.

Katika mgao huu wa Bajeti, Kaunti ya Machakos ilipata Ksh6 bilioni na kati ya hizo pesa, Ksh2.5 bilioni zitaenda katika mishahara na Ksh1.5 bilioni ni zitaenda kwa Bunge la Kaunti ya Machakos na mambo nyingine.

Bw. Spika wa Muda, ukifanya hesabu, utagundua kwamba pesa ambazo zimetengewa miradi ya maendeleo katika Kaunti ya Machakos ni Ksh1.4 bilioni na tuna maeneo nane ya uwakilishi bungeni ambayo yanatumika kama kaunti ndogo. Kwa hivyo, Kaunti yangu ina kaunti ndogo nane. Ukigawa pesa hizo, kila kaunti ndogo itapata Ksh150 milioni. Hizo ni pesa ambazo nilikuwa napata kama Mbunge. Hiyo ndiyo pesa inayoenda kwa kila kaunti ndogo ya Kaunti ya Machakos. Ni nini tumebadilisha katika siasa zetu za ugatuzi? Ni jina tu. Ni aibu kwamba tunakalia mikeka miekundu hapa, tunazunguka juu ya hii zuria na wananchi wetu tunaowaongoza kule Pokot wanatembea wakila mbegu za miti. Hiyo ni aibu kubwa.

Najua nimeguza nyaya za stima lakini wachazichome zitakaowachoma, maana lazima ukweli udhihirike. Kiasi cha pesa ambazo kaunti ndogo inapata katika Kaunti ya Machakos ni Ksh150 milioni na ni sawa na mishahara wa Mbunge. Kwa nini tutengeneze Seneti, tuwalipe Maseneta na magavana mishahara na kuwanunulia magari kutumia mgao ulikuwepo kabla ya ugatuzi? Huu ni udanganyifu, uhuni na ukora. Mpaka ukweli ujitenge, la sivyo, hakuna mahali tunaenda. Hakuna gavana hata mmoja ambaye anataka kuwaambia watu wake kiasi cha pesa ambazo kaunti yake imepewa na Serikali Kuu katika mgao huu. Kwa mfano, tungetarajia Gavana wa Kaunti ya Machakos kuwaeleza watu wake kuwa kaunti yetu imepatiwa kiasi hiki cha pesa na tutazitumia kwa njia hii ama ile. Wananchi wanaambiwa kwamba bajeti imesomwa, lakini hawaoni mradi wowote ambao unatatekelezwa kutokana na bajeti hiyo.

Bw. Spika wa Muda, imekuwa ni mchezo wa paka na panya kwa sababu watu wengine wana pesa ya kuwaajiri mawakili kushughulikia shutuma zingine na pesa za

kucheza mpira na karata. Tunajua kwamba kuna washukiwa wengine ambao wakipelekwa kortini wanasema kwamba hawafai kushtakiwa kwa sababu korti imetoa amri kwamba wangojee. Sisi hatutaki kuingilia kazi ya mahakama, lakini tunasema kwamba sheria itumike kwa kila mtu kwa usawa. Nimewasikia wenzetu ambao ni Wabunge wa Bunge la Kitaifa wakikashifu na kutumia matusi ambayo hayakubaliki. Seneti imeitwa majina, tumeitwa watalii na watu wakungoja Ksh1.6 milioni kila mwezi na kila mwaka kama pesa za kutembelea kaunti na kupiga siasa katika mikutano ya hadhara.

Bw. Spika wa Muda, Wabunge wanaosema kwamba Seneti haitaki pesa ya kuangalia maendeleo ni wao hao wanaosema kwamba magavana hawafanyi kazi inayofaa lakini wao wanapewa pesa za CDF ambazo wanasimimia. Sisi kama Seneti, tunataka kuonyesha uongozi mwema. Nataka Sen. Kagwe awe na uwezo wa kuungana na Sen. (Dr.) Khalwale, waje kwangu Machakos kuangalia ni maendeleo gani yamefanyika kwa kaunti ndogo na wawasilishe ripoti hapa Bungeni. Maseneta wenzangu; Mheshimiwa Kagwe, Mheshimiwa Khalwale na Mheshimiwa Orengo watawaambia ukweli wa mambo yalivyo kule mashinani. Vile vile, mimi nitatembea kwa kaunti zao nikiwa na wezangu na nitakuja hapa na kuwapa ripoti kamili kama ugatuzi unafanya kazi au la. Badala ya kufanya mambo hayo, Wabunge wanaangalia jinsi watakavyofaidika na kuwatusi Maseneta ambao wanatetea ugatuzi.

Bw. Spika wa Muda, kuna mpango wa kuvunja serikali za ugatuzi Serikali ya Jubilee inataka kuvunja Bunge la Seneti. Seneti ikiisha hakutakuwa na ugatuzi katika taifa letu. Magavana ambao hawatakuwa tayari kufanya kazi na Serikali iliyopo watafagiliwa. Tusipotunza ugatuzi na kusimama imara na tuache ukabila tunapotekeleza kazi zetu kwa sababu hii ndio Bunge ambayo ina kiini, maarifa na heshima kuu ya kusimama, kutetea Wakenya na kuwaunganisha, tukiangalia mambo ya Bunge la Kitaifa tunajua kwamba mambo yataharibika. Kwa hivyo, bila kubembelezana na kuangalia nyuma, tunataka kuwaambia Wabunge wa Bunge la Taifa kwamba lazima tujitahidi kuona kwamba zile pesa ambazo zimetengewa miradi ya maeneo Bunge; yaani CDF, zinarudishwa mahali zinafaa kutumika. Hatutaki visa vya gavana kujenga darasa ya mita mbili halafu Mbunge anakuja kesho na Ksh3 milioni na kuongezea futi au nusu mita pale pembeeni kisha anasema kwamba amejenga darasa. Kama gavana anajenga shule, Mbunge naye anafaa kununua viti ambavyo vitatumiwa na wanafunzi katika darasa hilo. Hizi ni pesa za wananchi na si za mtu kuweka katika akiba na kutembea nazo. Tunataka kuona pesa za Serikali zimewekwa katika mahali moja na zitumiwe vizuri

Ninataka kuwaambia wenzangu kwamba hatuhitaji kushindana kuhusu nani anajenga hiki ama kile kwa sababu tukitoa pesa hizo wengine watamaliza miaka mitano bila kwenda nyumbani kwa maana wanaenda kujigamba na kusema kwamba wameleta hundi ya kuwasaidia wananchi. Tukitoa jambo hilo, watakuja hapa na kutuuliza kama Seneti tuwaonyeshe njia.

Bw. Spika wa Muda, naunga mwenzangu Sen. (Dr.) Khalwale kuhusu mambo ya ukabila katika taifa letu. Mjadala ambao unaendelea kuhusu kumng'oa mamlakani Bw. Tobiko, wale wanaosema hivyo hawasemi mtu wao hatolewi lakini mtu wao akishikwa, wote wanaungana pamoja. Wengine wamesema kwamba Wabunge kutoka mkoa wa kati

sio Wabunge wa Kenya na wanaongea kama watoto wa mama mmoja. Wanasema kwamba watahakikisha ya kwamba Dkt. Monica Juma hapati kazi katika Serikali yetu. Pia, wanataka Bw. Tobiko aondolewe kwa sababau anapeleka watu kortini. Ingelikuwa mtu mwingine, hungewasikia wakisema aondolewe afisini.

Bw. Spika wa Muda, naunga.

Sen. Kagwe: Mr. Temporary Speaker, Sir, from the outset, I want to say that I support the Bill. I qualify that even though I support the Bill; there are many aspects of the Bill that I would like to see differently. I disagree with those who say that devolution has had no effect on communities and people because the Committee on Information and Technology last week completed visiting 27 counties.

In two years, we have seen every aspect of people's lives get different from before devolution. That is why I wonder what the enemies of devolution think when they say that they do not like or want to see devolution. For the first time in a county like Nyeri, we have ambulances that pick the sick from villages. For the first time in our counties, we are seeing hospitals that are beginning to work. This is the first time that this is happening as opposed to popular opinion. The other aspect that we must remember about devolution is that we must keep in mind that economics works on the basis of money that has been devolved downwards through the multiplier process.

Money is multiplied because it is with the people. The more money you can multiply in different people's hands, the bigger the economy and the greater the Gross Domestic Product (GDP). It is an aspect that we never talk about or do not see, but that is probably the biggest aspect of devolution; that there are those youths and workers in hospitals who can spend a little bit more money in the counties because that is where they are working. There are Government or county officers who can buy a little bit more *unga* from the kiosk and because they can do so, the person working in the kiosk can employ one more person. That is how the economy begins to move and work all over the world.

Mr. Temporary Speaker, Sir, for us to pretend that we cannot see that, and for those who do not like devolution to pretend that it was always the case, prior to devolution, is at the very least dishonest. While we can see that money has been allocated to the various counties, never mind the pros and cons of it, I think that one of the things that we must also remember is that the ultimate ambition of devolution is that counties are supposed to sustain and develop themselves to the extent that like other nations of the world, there will be counties that will actually contribute backwards to the economy, rather than just accepting money from the national Government.

If you look at some of the most devolved countries, for example, in India, where 65 per cent is devolved counties, you will find that there are some counties there that actually give net wise money to the Government and not the other way round. I think that it is good for us to have a vision about tomorrow's devolution. How will counties be devolved tomorrow? What sort of devolved system are we going to have in another 50 years, long after we are not here? It is today that the foundation of what is going to happen in the next 50 years has got to be laid.

If we do not do that, in the next 50 years, when our grand children will be sitting in this House, they will still be talking the same language. That will be failure on our part.

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To my mind, to protect devolution today, we need triumvirate relationship between the Senators, governors and the Members of the County Assemblies (MCAs). I urge my colleagues to invest time, energy and effort in developing relationships with our governors and county assemblies because those are the institutions that are under threat. When you are told that devolution is under threat, it is not the air that is under threat; it is you, Senators, Governors, MCAs and the county governments. That is what is actually under threat. If we devolve that, then devolution is finished.

Mr. Temporary Speaker, Sir, when people say jokingly, because nobody can seriously contemplate dissolving or doing away with the Senate, it is a bad joke. When you think about dissolving them, it is exactly the same way that it would be a bad joke for us to think that we can dissolve the National Assembly. It is not unimaginable but is not a good joke. However, somebody can propose a bad joke that let us dissolve the National Assembly because after all, it is the so expensive and therefore, let us have only 67 people representing Kenya and let a constituency be equivalent to a county. Guess how much we are going to save as a nation if we only have 67 legislators for the entire country. That can happen, but it is not the way to think or go.

When we hear that money to oversight the money allocated in this entire Budget has been taken away, it is the same way as those who bite their noses to spite their faces. You think that you are saving something or being smart, while as a matter of fact, you are looking dumber by the day. This is because if you take that money away, it means that those who are willing to engage in corruption will have a free day because there is nobody oversighting this money. In fact, had somebody told me that we are not going to get the Kshs1 billion, and that the National Assembly is going to allocate that amount to use in the National Assembly to oversight the county governments, I would have probably said that it is not their responsibility, but it is better than the way we are doing it now. This is because at the very least, there would still be a factor of oversighting this huge quantity of money that has been given to the counties.

Mr. Temporary Speaker, Sir, I think that the relationship between the two Houses; the National Assembly and the Senate, has got to be at a much more mature level. We sat with Sen. (Dr.) Khalwale and Sen. Elachi face to face with the Members of the National Assembly and I dare to say that we learnt two things; one, is that there are some very bad people in the National Assembly but we also learnt that there are some very good people in there. This is because without those good people, we would not even have mediated successfully. Whichever way you look at it, we mediated successfully. This is because the money that we were looking for the counties went to them. It is good for us to repeat this because this is a House of record. Even if it meant that we give up our salaries to travel around the counties, forget about the oversight money, so that devolution works, I personally would be quite happy and willing to do so. If that is the sacrifice that has got to be made so that Kenya's children can live better tomorrow, so be it.

History will judge those who think that they can play around. I think that some people have read the Bible so much that it has become a book. It no longer provides any spiritual nourishment. It is a book that they read to quote nice words from. If they are really the sort of people that others pretend to be, more religious and completely spiritual,

and then they go and take the kind of action that is vindictive---The Bible says that “revenge will be mine and not yours”. Even if you feel that you are hurt, it is not you to revenge.

The Bible is also clear that unless you have given yourself lordship status, where you have moved from being an Hon. Member of Parliament to a “Lord Member of Parliament” so that the Lord giveth and taketh away--- This is because you cannot give the Senate Kshs1 billion and take it away the next day. It does not work like that. It is sad to see individuals who would otherwise be very respectable people in this country; who people originally thought would take higher offices in this country, yet when it comes down to it, you are very disappointed, because you see that they do not have the kind of big minds that one would have imagined in the past.

Mr. Temporary Speaker, Sir, that is not really the point that I want to make. The point that I want to make is that it is important for us to utilize the money that has been given effectively. I think that all Senators should demand from the county governments that meetings be held between the executive, the Senate and the county assemblies to discuss and agree on how this money is going to be used, moving forward. This is because, we cannot oversight since we do not know what the money was supposed to be used for in the first place

I think the Senate must support county assemblies. Having been around and seen the capacity of some of those county assemblies, it is such that they cannot oversight this expenditure. It is not there. Never mind the Senate; even county assemblies cannot oversight expenditure such as this. Going forward as Senators, we must fight in the next Budget for county assemblies to be given sufficient funding for them to function like able Houses.

Mr. Temporary Speaker, Sir, I would have liked to see a conditional grant in this document related to Information and Communication Technology (ICT). My Committee has just travelled through China and Thailand. In those countries, they are no longer calling ministries of ICT as such. They call them Ministry of Digital Economy. They have moved on. ICT is just infrastructure. Digital economy is where the central thinking within governments, states and counties is predicated on the fact that technology is the one that is going to leap-frog them from Third World nations to newly developed nations.

It is clear that in this country, we have not really taken this matter seriously. Had we done so, we would have gone the way of conditional grants. When we talk to the Treasury itself about this, they have not grasped completely the importance of ICT and ensuring that people are thinking technologically even at the lowest level of our governments.

I pray and hope that as we move forward, we will begin to think how we are going not just to follow through every step that the Western world is going through, but at some point, we will leap-frog and move ahead. It is the only way that we can gain respect and dignity as a people, Africans and as Kenyans. The only way we are ever going to get any form of respect is when our economies are growing so much so that no African is drowning in the middle of the Mediterranean Sea, going to a place where you are totally unwanted and no Kenyan girls are travelling to a cruel nation called Saudi

Arabia, where they burn people's backs with hot water – little girls who have travelled from here for just little domestic jobs out of desperation. This desperation is borne out of the fact that they do not have living opportunities in their own country.

Mr. Temporary Speaker, Sir, devolution was brought so that we can ultimately create a happier nation. Devolution in itself is not an end but a means to an end. When we start thinking technology, centralizing and good management, so that revenue collection will be so transparently done that 100 per cent of, it will be used to create jobs for our young men and women, only then can we say that devolution is working.

Devolution is not just seeing a road; it is creating circumstances where there are people working on the roads. It is not just creating hospitals, it is ensuring that there are people working in those hospitals and being ably managed and paid. It is about people. The whole national governance, being, movement and development are just words that are predicated on the happiness and well-being of people.

Therefore, at the end of the day, we must never lose sight of this fact. We are not here just to talk about devolution but to also make our citizens happier.

I support.

Sen. Obure: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to support this Bill on equitable allocation of revenue among county governments. The Kshs259 billion proposed in this Bill to be divided among the 47 counties is, in fact, nearly equal to the Kshs258 billion that this Senate considered adequate to meet the needs of counties two years ago in the Financial Year 2013/2014. Since then, Senators transferred a number of key functions from the national Government to counties. Unfortunately, the marching resources have not been transferred which means counties will not be enabled to perform those functions.

My opinion is that we could be setting up counties for failure. I am, therefore, of the strong view that far too much money is being retained by national Government Ministries. This is demonstrated by the fact that in a Budget of Kshs1.8 trillion, only Kshs283 billion which includes additional conditional allocations is going to counties. I need to emphasize that we need more money in the counties and we will continue to fight for more money to go to counties.

Mr. Temporary Speaker, Sir, look at the whooping Kshs25 billion that has been given to the National Youth Service (NYS) which is an institution working under the Ministry of Devolution and Planning. The money is meant to construct dams and roads and yet this is a devolved function. This money should be given directly to counties so that if they wish to engage NYS, then they are at liberty to do so.

Irrigation under the Ministry of Agriculture Livestock and Fisheries has been allocated a huge sum of money and yet the function of agriculture and livestock has been devolved. In health, Kshs59 billion is being retained at the Ministry of Health headquarters and yet we know that health services were devolved. Health care facilities such as dispensaries, health centres and hospitals are under the care of county governments. This is the precise amount that we are giving to seven of our largest counties in terms of population. Look at the amounts given to Nairobi, Kiambu, Nakuru, Kakamega, Mandera and Kisii counties. That is precisely the amount that we are giving

to the Ministry of Health at the national headquarters when we know that the health function is devolved. I do not know whether this has been thought out clearly.

Mr. Temporary Speaker, Sir, my second observation is with regard to the role of the Commission on Revenue Allocation (CRA). In the Constitution, CRA is mandated to make recommendations for equitable sharing of revenue between the national Government and the county governments, on the other hand, sharing of revenue among the 47 county governments. However, for the third year running, some of the CRA recommendations have been set aside and replaced by those of the national Treasury, giving rise to the need to provide lengthy explanations for the difference between CRA recommendations and those of the national Treasury.

This Financial Year, the CRA came up with a proposal to provide some Kshs3.3 billion out of the Fuel Levy Fund to assist in the maintenance of county roads. Treasury had not even thought of it. Gladly, this proposal has been accepted. Unfortunately, several other recommendations from the CRA including proposed assistance for the village polytechnics which we know are in dire need of support, the Kshs3.3 billion recommended towards this was rejected. If you look at the proposal of Kshs3 billion from CRA for improvement of ECD infrastructure which is a burden which the county governments can hardly afford to take up, again this was not accepted.

Mr. Temporary Speaker, Sir, overall, you will notice that the CRA had recommended that counties be given Kshs282.4 billion which would have been equivalent to 36 per cent of the most recent audited accounts. While in this Bill, we are only dealing with an amount equivalent to 33 per cent. The point I am trying to make is that we should take CRA seriously. We constituted this body and appointed very competent people to work in it. They are an independent Commission and, therefore, they are best placed to make recommendations in respect to the Division of Revenue and so on.

Division of revenue cannot be undertaken by the national Treasury because they cannot be expected to be neutral. This is an issue that I really urge this Senate to pursue more vigorously in future so that we can get a fair deal going to the counties. CRA has the capacity to undertake research because they have the professionals who are trained to do this kind of work.

My third concern relates to the transfer of funds which we approve to go to the counties. A number of counties have complained that disbursement of money to the counties is delayed sometimes for very long periods of time causing the counties to default on their obligations. If this is true, this is clearly a case of violation of the law and breach of faith. It is also a breach of the commitment which has been entered between the national Government and the county governments on the basis of the disbursement schedule which we will be approving after this Bill goes through.

I also want to say that although we would like to see more money go to the counties, we all agree that for the first time in the history of this country resources have been moved from the centre to the devolved units. Devolution has taken off in earnest and no one can stop it. County governments, however, should not depend on shareable

revenue alone. Every effort should be made to increase revenue from other sources by improving operational efficiency and by ceiling loopholes for pilferage and fraud.

Mr. Temporary Speaker, Sir, I also want to say that what remains to be done now is for us to ensure that the money allocated to the counties is efficiently and effectively utilized as planned and approved by the county assemblies. We must as a matter of duty, ensure that there is strict accountability for resources allocated to the counties because this is the only way we can guarantee delivery of services.

It is, indeed, the only way we can ensure that devolution impacts positively on the lives of our people. We must find a way of ensuring that our people are involved in what goes on in their localities. People must be involved in setting up priorities in matters that concern them. They must be informed about how much money has been earmarked for projects within their wards. They must be involved in the process of project implementation. I believe that this is important and it will greatly help in oversighting the use of resources that we send to counties.

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

Sen. Orenge: Mr. Temporary Speaker, Sir, I begin, first of all, by thanking the team of Sen. Kagwe, Sen. Elachi and Sen. (Dr.) Khalwale for the wonderful job they did when we had a stalemate on the question of division of revenue. I also thank, hon. T.J. Kajwang', a Member of the National Assembly, not for remaining firm and supporting the team from the Senate but because he was doing right for the country. I hope that the spirit of bipartisanship which our team demonstrated when they went for negotiations will colour other businesses that we will deal with in the Senate.

Mr. Temporary Speaker, Sir, as a starting point, Sen. Kagwe gave me an idea that I do not want to take for granted. He said that some people are talking of scrapping off the Senate and he thought that that was a wild idea. I want to convince him that it may not be a wild idea because there was once a Senate and it was scrapped off in broad daylight. There was a Senate and Parliament that felt that it was necessary to scrap off the Senate. They did not only scrap off the Senate but also abolished regional governments. An imperial presidency was established. The eight or nine regional governments that were in existence at that time were no more.

Therefore, Mr. Temporary Speaker, Sir, when somebody in leadership in the National Assembly says that they will scrap the Senate, I do not take it as an idle engagement or a joke. We must be prepared for this new threat to devolution. Indeed, historically, the narrative has not just been about the Senate. You will remember that there was a time when the former President, the late Mzee Jomo Kenyatta and others were in detention. During that time, people said that when we become free, nobody, man or woman of this country, will ever be detained. Within three years of the Independence Government, it was not just those who were enemies of the freedom fighters who were detained. They sent each other, amongst themselves, to detention. Over the next five or six years, more than 20 national leaders went into detention.

Another wild idea came that Kenya is too busy to have a multiparty system and, therefore, it only needed one party. It took an afternoon in the National Assembly to get rid of other political parties. Subsequently, again, it took less than an hour for the

National Assembly to remove the security of tenure of judges, that of the Attorney-General and that of Auditor and Controller General. Therefore, these are not wild ideas. They are ideas that if we do not watch out very carefully may lead us to be folded up. At least when the First Senate was abolished, a seat was created for each Senator. However, Sen. Kagwe, when they scrap off the Senate, you will just go back home to Nyeri. Hopefully, you will do some business which will keep you busy.

So, I want us to show the spirit that I have seen from the other side of the political divide in this House. You need to be congratulated when the Senate Majority Leader would stand where Members of the National Assembly and the President of the Republic of Kenya were and speak for the Senate. Our three Senators, in meeting with the National Assembly, were speaking for the Senate. So, in the next one year – because the election programme is going to come very quickly – we need to stay together in order to make devolution function. We should make sure that we continue to register successes in this new project of ensuring that resources go to the counties.

Mr. Temporary Speaker, Sir, there is one thing which is already going on that we may lose sight of. Parliament is one which appropriates and authorizes expenditure. In the last conversations that we had between the National Assembly and ourselves, it would appear that the role of Parliament of budget making and authorizing expenditure, which was borne out of years of experience, should come back to where it belongs. I believe and fear no contradiction that the Budget and Appropriations Committee in the National Assembly has become part of the Treasury and is no longer part of the National Assembly. In fact, they pretend to be making speeches in the National Assembly as part of the National Assembly but, indeed, they have become part of the national Treasury.

Unfortunately, they do not belong even to the first tier of leadership in the national Treasury. They belong to the third tier of the national Treasury. At least, I know that if Sen. Kagwe had been working for the national Treasury, even if he was consumed or bought by the Treasury, he would not agree to just be part of the third tier of the national Treasury. He would want to call the shots.

It is very clear now, unlike before, that the national Treasury comes to Parliament as invited guests. They are not part of Parliament at all. In fact, they should be escorted by the orderlies. But you find the Chairman of the Budget and Appropriations Committee following the two representatives of Treasury, as if they are the leadership of the National Assembly and, indeed, Parliament. That is a big shame for the freedom that we have fought for, to make Parliament a supreme body in matters of legislation and finance.

The Reverend should be told that the moment he is seen in that particular guise, he is like the archangel being followed by the devil. That cannot work out because it is hon. Mutava Musyimi who should be looking into the affairs of the national Treasury. He should look into their misdeeds and wastages. But if he is the one now who is following them like a toddler, it is the biggest shame I have ever seen.

Mr. Temporary Speaker, Sir, this is the moment that together we can make sure that this great project of devolution works. Sen. Kagwe got it right. To some extent, whether money is being wasted at the counties, we are seeing signs that certain things are happening there unlike before. I have a problem with many governors but, at least, if I go

to Nyamira, like we did the other weekend, you can see that there is something happening on the ground, for the goodness and improvement of our people.

In 50 years, the national Government has not been able to do a road, let alone a tarmac road in Wajir, but within one-and-a-half years of devolution, there is a tarmac road of 27 kilometres going round the town. Indeed, this is being done by resources which the county government has not just solicited from the national Government, but also used whatever resources well to advance that cause.

The Temporary Speaker (Sen. Mositet): Order! Sen. Orengo, you will have six more minutes when debate on the Bill resumes tomorrow.

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Hon. Senators, it is now time to adjourn the House. The House, therefore, stands adjourned until tomorrow, Thursday 18th June, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.