

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 4th December, 2014

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

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

PRAYERS

PAPERS LAID

SCIENCE, TECHNOLOGY AND INNOVATION
REGULATIONS 2014

Sen. Sang: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 4th December, 2014:-
Science, Technology and Innovation Regulations 2014.

(Sen. Sang laid the document on the Table)

FIRST QUARTER NATIONAL BUDGET IMPLEMENTATION
REVIEW REPORT FOR THE YEAR 2014/2015

Sen. Keter: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday, 4th December, 2014:-
First Quarter National Budget Implementation Review Report for the for the Year 2014/2015

REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL
OPERATIONS OF THE COUNTY GOVERNMENT OF TURKANA

Report of the Auditor General on the financial operations of the County Government of Turkana and its defunct local authorities for the period 1st January to 30th June 2013

(Sen. Keter laid the documents on the Table)

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

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I have heard the Senator for Kericho laying on the Table Papers concerning the audited accounts by the Auditor General. That is the function of our Committee, the Committee on County Public Accounts and Investments Committee, and he is not a Member of our Committee. Can we know what the clerk is up to; lest the people of this country think that we have been fired or have resigned?

Sen. Keter: I am doing it on behalf of the Chairperson of the Committee on Finance, Commerce and Budget, Sen. Billow. They are signed by him and not me, the Senate Deputy Majority Leader. I am doing it on behalf of my colleague.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, audited accounts from the office of the Auditor General do not go to the Committee on Finance, Commerce and Budget.

Sen. Keter: These are specific; the county---

The Speaker (Hon. Ethuro): Order, Sen. Keter! Just because you have the microphone does not mean that you must respond. Let me have a look at the documents.

(The Speaker (Hon. Ethuro) perused the documents)

Ideally the two Papers; Report of the Auditor General on the Financial Operations of the County Government of Turkana and its defunct local authorities for the period 1st January to 30th June 2013 should have come from Sen. (Dr.) Khalwale, while the Report of First Quarter National Budget Implementation Review Report for the Year 2014/2015, should have come from Sen. Billow. However, the Senator for Kericho was acting in his capacity as the Senate Deputy Majority Leader.

REPORTS OF THE IMPLEMENTATION COMMITTEE ON ITS STUDY VISITS TO SPAIN AND FRANCE

Sen. Keter: Thank you, Mr. Speaker, Sir. Further, on behalf of the Chairperson, Sessional Committee on Implementation, Sen. Orengo, I beg to lay the following Papers on the Table of the Senate today, Thursday, 4th December, 2014:-

Reports of the Sessional Committee on Implementation on its study visits to the Kingdom of Spain, between 24th and 28th March, 2014 and France between 22nd and 26th September 2014.

(Sen. Keter laid the documents on the Table)

NOTICE OF MOTION

APPROVAL OF NOMINATION OF SENATORS TO SERVE IN SENATE COMMITTEES

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion:-

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THAT, pursuant to Standing Order Nos. 177(1) and 178, the Senate approves the nomination by the Rules and Business Committee of-

- a) Sen. G. G. Kariuki to the Standing Committee on Finance, Commerce and Budget;
- b) Sen. Ben Njoroge to the Standing Committee on Labour and Social Welfare to replace Sen. G.G. Kariuki; and,
- c) Sen. Hosea Onchwangi to the Sessional Committee on Implementation to replace Sen. Ben Njoroge.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Next order please.

STATEMENTS

FUNDING OF UNIVERSITIES IN KENYA UNDER THE UNIVERSITIES ACT, 2012

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I would like to give feedback regarding a Statement that has been listed on the Order Paper today that was sought by Sen. Wetangula who is not in the House. I want to just give the feedback that we have received from the Ministry of Education, Science and Technology. They require time because they need to engage with other stake holders to get the answers. Therefore, they have requested that they will give us the feedback by Tuesday, 9th December, 2014.

With your permission, when they give us that feedback then, we will be able to give it back to the House.

CRITERIA USED FOR SELECTION OF CONSTITUENCIES FOR CONSTRUCTION OF TECHNICAL TRAINING INSTITUTES

Sen. (Dr.) Zani: Mr. Speaker, Sir, I would like to respond to a Statement that had been sought by Sen. Kittony, who had requested to know the rationale that was used in the distribution of specific constituencies within which the construction of technical training institutes had been done. We have been able to receive feedback from the Ministry of Education, Science and Technology. They have given a rationale for the first 60 constituencies that they have picked; on the basis that they decided that, first of all, they will build in each of the constituencies, a technical training institute, which makes 47. Then, on priority basis and especially based on constituencies which were completely lacking in terms of having technical training institutes, they will give priority to those and that would make a total of 13. So, the 47 plus 13 would give a total of the 60 constituencies that they have selected for the building of the set of technical training institutes to begin with. They have also indicated that in the long run, it is going to be possible to have a technical training institute in each of the 290 constituencies within a five year period.

So, as much as they are saying they have started with these 60 constituencies, they are prioritizing to ensure that in the long run, all the 290 constituencies have technical training institutes. They have estimated that each project will cost about Kshs50

million, of which, 40 per cent will be disbursed from the Ministry of Education, Science and Technology. All in all, they have requested and indicated that they did this in collaboration with the county governments. They asked the county governments to coordinate, identify and offer sites for the establishment of those new technical training institutes.

Thank you Mr. Speaker, Sir.

Sen. Kittony: Thank you, Mr. Speaker, Sir. It has been a long wait but at last, I am happy that the response is here with us. I am happy to note that all the constituencies of Kenya are represented in this. However, I will look for other questions because I think there are quite a number of other issues that relate to the finances and so on.

I am grateful for the response.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I rise on a different issue. May I proceed?

The Speaker (Hon. Ethuro): Yes, please, proceed.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, you had made an order that---

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I thought that you were going to give us a few more chances to interrogate that Statement before we go to a different matter.

The Speaker (Hon. Ethuro): Order Sen. Khalwale! The owner of the Statement is very pleased. So, let us proceed.

INVASION OF ELEPHANTS IN MAKUENI COUNTY

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, last week, you made an order that the Committee on Finance, Commerce and Budget, chaired by Sen. Billow, answers a question about the invasion of *Jumbos* otherwise known as elephants in the County of Makueni. We have a crisis. One person is dead and we are worried. The Statement is not listed and I thought that I should raise it.

The Speaker (Hon. Ethuro): Yesterday, there was grave concern regarding the Statements that are yet to be responded to. We mandated the Senate Deputy Majority Leader, in the absence of the Senate Majority Leader, to go wherever he needs to go and come with a response. So, at this stage, I should maybe invite Sen. Keter to give us an update.

Sen. Keter: Thank you Mr. Speaker, Sir. Pursuant to your ruling yesterday, Sen. Kindiki, the Senate Majority Leader and I, had a meeting with the Executive on the way forward. We had a list of about 63 Statements some of which have been answered, others which are in the pipeline and others are still within the respective Ministries.

We came out with a way forward that because it was late at night, with 63 Statements and we could not ascertain which ones, the Executive gave us an assurance that from today henceforth they would abide by that ruling. I will seek your indulgence. Since it was late at night, by next week Tuesday, there will not be any pending Statements. Unless otherwise, the one which, my colleague, Sen. Mutula Jnr. is asking, I personally talked to the Cabinet Secretary (CS) of the Ministry of Environment, Water and Natural Resources, Prof. Judith Wakhungu, this morning. She said that they had

received the Statement yesterday because it had been misdirected to another Ministry. By midday, she called me to say that she had signed the Statement.

So, I beg my colleagues with regard to the one for Sen. (Eng.) Muriuki and Sen. Kiraitu, that all of them will be delivered by Tuesday.

The Speaker (Hon. Ethuro): Sen. Sang.

Sen. Sang: Mr. Speaker, Sir, I take this opportunity to congratulate Sen. Keter for the efforts that they have made. However, I want him to confirm that, indeed, they talked to the other Ministers including the Attorney-General. As the Committee on Legal Affairs and Human Rights, we have had challenges getting responses from the Attorney-General. Some of the Statements that we sought almost six months ago are still pending up to now. The same office has the habit of directing us to other offices. You seek a Statement from the Attorney-General's Office and they direct you to a commission or the Director of Public Prosecution's (DPP) office. Therefore, we have had challenges dealing with that particular office. Could he confirm that he actually reached out to the Attorney-General?

The Speaker (Hon. Ethuro): Do I take these interventions, Mr. Deputy Majority Leader? Sen. Ndiema, if you have a Statement, direct it to the Deputy Majority Leader.

Yes, Sen. (Dr.) Zani, for the Deputy Majority Leader.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. On behalf of the Chairman, Committee on Education, I would like to respond to a Statement that had been sought by Sen. (Dr.) Khalwale---

The Speaker (Hon. Ethuro): Order! Order! Just assume your seat. You must have been very busy where you were seated. Sen. Keter, you may respond to Sen. Sang.

Sen. Keter: Mr. Speaker, Sir, indeed, in our meeting, the Attorney-General was also present and all the Ministries ---

The Speaker (Hon. Ethuro): Order, Chair. If there are Statements you wish to respond to, I need to clear them before you contribute now.

Sen. Keter: Mr. Speaker, Sir, I want to assure this House that all the Statements from various Ministries and the Attorney-General's Office will be responded to without any delay. I give that assurance.

The Speaker (Hon. Ethuro): Sen. (Dr.) Zani, how many Statements do you have? Sen Hargura, I am also seeing you indicating? Sen. Hargura will take the first shot.

Sen. Hargura: Yes, Mr. Speaker, Sir. I sought a Statement from the Chairperson of the Standing Committee on Energy and he promised to issue it today.

The Speaker (Hon. Ethuro): I guess we will assume your Statement will fall under the fate that has been described to be available next.

STATUS OF THE RECRUITMENT AND DISTRIBUTION OF TEACHERS BY THE TSC

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I have a Statement that is ready to be given to Sen. (Dr.) Khalwale. He had requested to know about the recruitment and distribution of teachers by the TSC. We have information from the TSC that gives a breakdown of the recruitment of additional teachers and recruitment of replacement

teachers across each of the 47 counties. That data is here. Not only does it give the overall total figure but it also breaks it down across each of the various counties.

Thank you very much, Mr. Speaker, Sir. I beg to lay these documents on the Table of the House.

(Sen. (Dr.) Zani laid the documents on the Table)

Secondly, I also have Statements that are ready for Sen. Chelule who is not in the House at the moment and for Sen. Mositet from the Committee on Education.

The Speaker (Hon. Ethuro): Yesterday, we said the Committee on Education had a lot of pending Statements. That confirms, at least, the Senate Majority Leader and his deputy have done their home work.

Sen. (Dr.) Khalwale: Yes, Mr. Speaker, Sir, I would like you to indulge me so that you give me an opportunity to interrogate that big document showing how teachers were spread during the recruitment and replacement. I also request to make further clarification next week.

The Speaker (Hon. Ethuro): It is so granted.

Sen. (Dr.) Khalwale: Thank you.

The Speaker (Hon. Ethuro): We are still under Statements.

Sen. Ndiema: Mr. Speaker Sir, I want to give a Statement.

The Speaker (Hon. Ethuro): Proceed.

CLOSURE OF NCPB SILOS IN UASIN GISHU AND MIGORI COUNTIES

Sen. Ndiema: This is on a Statement sought by the Senator for Uasin Gishu, Sen. Melly. He had requested for a Statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries, regarding the closure of the National Cereals and Produce Board (NCPB) silos in Uasin Gishu.

In the Statement, the Senator sought to know when the NCPB silos will be opened to allow farmers to deliver and sell their maize to the Board. Secondly, he wanted to know the prices at which the Board will purchase the produce from farmers.

Before I read the Statement, this is also a matter of concern for the Sen. of Trans-Nzoia, yours truly.

The response is as follows:

With regard to when the NCPB silos will be opened to allow maize farmers to deliver and sell their maize to the NCPB, the Government is currently preparing for maize purchases from farmers. To facilitate this, maize transfer in depots and silos within the major maize growing regions have to be undertaken. This will decongest the silos and depots and create room for new purchases. The targeted transfers are as follows:-

1. 480,200 bags from Moi's Bridge, Eldoret and Kitale;
2. 459,250 bags in other cereals board depots; and other preparations are ongoing.
3. Purchasing bags for re-bagging maize in the silos.

The target is to transfer approximately one million bags and create room for an equivalent purchase.

Regarding the ongoing transfers, the details are in the report.

Meanwhile, farmers are depositing their maize in various depots for storage under warehouse receipting system. This is helping in preserving maize for the farmers. So far, the following amounts have been deposited under the system; 8,521 of maize in Moi's Bridge, 460 bags of maize in Kapenguria; and, 38,575 bags of wheat in Eldoret.

The amount of money allocated for maize purchase in the current 2014/2015 Financial Year is Kshs2,244, 961,384 compared to Kshs3 billion allocated in the year 2013/2014 Financial Year.

Regarding the prices at which the Board will purchase maize from the farmers, as mentioned above, transfers are taking place, preparations are under way for the Strategic Grain Reserve Trustees to meet and set the purchase price for maize before the stores are opened.

That is the Statement. I would want to add that the Committee is very concerned about this delay and, indeed, invited the Cabinet Secretary in charge to appear about one and a half weeks ago and impress upon the NCPB to open the silos in time. The Ministry is aware and the Committee feels that this delay is not well explained; the fact that the price has not been determined by now is a serious concern. If we are really addressing issues of food security in this country, the prices should be decided even before farmers decide to go and plant their crops. The fact that bags are being purchased now when maize is ready cannot really be explained. This should have been done long ago.

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

Sen. Ndiema: Mr. Speaker, Sir, those are just concerns of the Committee ---

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

Sen. Keter: Mr. Speaker, Sir, I thought my colleague, Sen. Ndiema, was responding to a question. However, he seems to also be asking questions and engaging himself in a debate.

(Laughter)

So, I am wondering. He was supposed to respond and all of a sudden, he is also asking a lot of questions.

(Laughter)

We are lost on what to ask---

The Speaker (Hon. Ethuro): Sen. Keter, you cannot engage in a debate by yourself. You are the one who was trying to engage Sen. Ndiema. However, on the aspect of the Chairman asking more questions than the answers, there is a concern there.

Sen. Ndiema: Mr. Speaker, Sir, the Statement I have read is from the Ministry concerned. There is a Committee also of this House which has to give additional information. I believe that perhaps you will guide the House. Would I be in order also to give the views of Committee because this is the concern of the Committee?

Thank you. I have finalized.

The Speaker (Hon. Ethuro): You may wish to recall that the Chairman had already declared his interest in the matter. So, I am not sure whether it is now the Committee making those additional remarks or they are his own.

Yes, Sen. Melly.

Sen. Melly: Thank you, Mr. Speaker, Sir. Regarding the answer to the question as to when the NCPB silos will be opened and the prices that farmers will sell their maize, as I said last time, this issue was urgent because of the rains in these areas. I feel that the Chairman of the Committee should still seek further answers.

Regarding the second question on how much a bag of maize would cost, even if we had these depots that are storing maize temporarily, they are not enough. As we talk today, almost half of the maize has been destroyed by rains. You know about the losses. These counties depend on maize for their livelihoods. It is their source of living and the earlier we address this issue, the better for our farmers. They depend on maize farming to improve and develop their economic lives.

Thank you.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise on a point of order. The Statement sought two things. One; when will farmers start selling their maize to the NCPB? The Chairman has not told us when they will start selling maize to the Board. Secondly; when they start selling maize to the Board, what will be the price?

In my view, the Chairman, therefore, has not answered the question. We should request him to go back and bring an answer. This is because we have information that some mandarins in Government have imported cheap maize from Uganda. They now want to frustrate local farmers in Lugari, Uasin Gishu, Bungoma and Trans-Nzoia, so that their maize can rot and then they sell their own. Could he go back and bring us a proper answer?

The Speaker (Hon. Ethuro): You know that when you seek a point of order, you use the intervention. I can see your name but you have also verbalised it.

Yes, Sen. (Dr) Machage.

Sen. Machage: Mr. Speaker, Sir, when Sen. Melly asked these questions, I also raised an addendum on the same and sought information on the situation of maize piled in the stores of Migori County. For more than three seasons, the stores are excessively full and maize has not been transferred. It is reliably stored there by the Department of Special Programmes. I enquired when this maize was going to be removed from the stores to create space for farmers to put their maize. I have not had a response on that. Would I also be in order to request that the Chairman goes back and seeks for answers to the questions we asked?

The Speaker (Hon. Ethuro): Sen. Lesuuda.

Sen. Lesuuda: Thank you, Mr. Speaker, Sir. I want to echo what Sen. (Dr.) Khalwale has said; that listening to the Chairman of this Committee, it is clear that even he, himself, is not convinced by the answer that the Committee received. So, it is prudent that they go and get us specific answers to those specific questions.

An additional question would be; what is the cost of the farmers to have their maize right now in those temporary silos? We know that some of those temporary silos

are not Government owned and farmers are incurring more to have their maize in the temporary silos.

The Speaker (Hon. Ethuro): Yes, Sen. Gwendo.

Sen. Gwendo: Mr. Speaker, Sir, mine is with regard to a different Statement, not this one.

The Speaker (Hon. Ethuro): Okay. Sen. Sang.

Sen. Sang: Mr. Speaker, Sir, it is really unfortunate that despite the Chairman of the Committee indicating to us very clearly that he has an interest in this matter, he went ahead to release a Statement that does not address the two key issues that were raised. In his response, we get the indication that the Government is unable to buy the grains from our farmers because the silos are full. Some parts of this country have experienced shortage of food, especially the northern part of this country. Is the Government telling us that they are unable to release some of these grains that are in our silos to some of these areas that are experiencing hunger to ensure that the silos are available for uptake of the maize?

The Speaker (Hon. Ethuro): Order, Sen. Sang. You are making a submission. You are supposed to be brief.

Sen. Sang: Mr. Speaker, Sir, I am just about to finalise. The other issue that I was hoping the Chairman would address is: The Government buys maize from farmers in 90-Kg bags. The standard bag for any other commodity is 50-Kg. Moving forward, can the Government give a commitment that they will be shifting from a 90-Kg bag to a 50-Kg bag to ensure that our farmers are able to reap from the sweat and the toil in their farms?

The Speaker (Hon. Ethuro): Finally and very briefly, Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I have raised this issue in the House before, that the South Rift had a serious problem with the Lethal Maize Disease. At the moment, the National Cereals and Produce Board (NCPB) storage facilities in the South Rift in Kericho and Bomet counties are actually empty. Perhaps these are issues which the Chairman may probably respond to and see whether these facilities can be used.

Secondly, there is also need to streamline the business of buying and selling maize which is at the moment being conducted haphazardly by small traders who are inflating the prices for the people in the area. If the Government can transfer this food to these areas, constructive trade in maize can be carried out easily and, finally, we should have definite prices for the maize.

The Speaker (Hon. Ethuro): Sen. Ndiema, my directive would be, do not respond to anything. You have heard the Members. Food security is a major issue. Get back to the Cabinet Secretary because you also have concerns, as a Committee, so that you get this matter addressed comprehensively.

Sen. Ndiema, you look surprised.

Sen. Ndiema: Mr. Speaker, Sir, I stand guided. This is because of the issue of time.

The Speaker (Hon. Ethuro): I have directed that you deal with the issue. I also would like the Majority Leader to assist you. This is a serious matter about food security in the Republic of Kenya. It must be given its priority basis. That matter must be resolved next week. The Majority Leader is listening and he is nodding in affirmation.

Next Statement!

Senate Majority Leader, I thought you were going to assume your position. I said “next Statement.” The Statement is from you.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Indeed, Mr. Speaker, Sir, I have resumed my position with thanks to the Deputy Majority Leader who did a good job between yesterday and today. I had even handed over the limousine.

Let me proceed to give the Statement.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 9TH DECEMBER, 2014

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, pursuant to the provisions of Standing Order No.45, this is to present the business for the coming week. As Senators will note in the Order Paper at Order No.14, I will be moving a Motion of Adjournment of the Senate in accordance with Standing Order No.28(3) and as per the Senate Calendar, for the House to adjourn until commencement of the Third Regular Session on the second Tuesday of February, 2015, as provided by Standing Order No.27.

I take this opportunity to thank and sincerely commend all Senators for their diligence and commitment to the performance of the constitutional mandate of the Senate particularly as the guardian angels of devolution in Kenya that culminated in the passage of 11 Bills, 68 Motions and presentation of 8 petitions and 104 Statements relating to various issues that affect our counties and our country.

(Applause)

Hon. Senators, as you are aware, the Senate is faced with various challenges particularly around facilitation of Senators to effectively perform their constitutional functions as leaders in their respective counties. It is also clear that we, as Senators, are facing tremendous challenges in terms of the smooth operation of our legislative mandate. That notwithstanding, I am happy to report that the Senate leadership is constantly engaging the relevant arms of Government, constitutional organs and agencies to ensure that the mandate of the Senate is not hindered by any person or institution and to ensure that we deliver to the people of Kenya, our counties and ourselves.

Just this morning, there was a very successful breakfast meeting between the Senate leadership and the Parliamentary Service Commission (PSC). We have received positive assurances. The Speaker and his brother Speaker from the National Assembly, the Senate Minority Leader, Commissioner Musila, Sen. Mutula Kilonzo Jnr., Sen. Sang, Sen. Murkomen and other colleagues were present during that breakfast meeting. We are convinced, beyond para adventure that if we can build on the spirit of that meeting, and it is possible to do so, when we resume early next year, we will have a better environment to operate from because nobody is interested in fighting other institutions or colleagues in the other House. We have no interest in fighting anybody.

I want to take this opportunity to say, going forward, we expect the work that has been in progress, led by Sen. Murungi, the distinguished Senator for Meru County, around assisting a facilitation fund for Senators, can build on what we have done today.

The Speaker (Hon. Ethuro): Order, Senators. We have enough numbers for voting. I would really encourage that we remain in the House.

Proceed, Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I am about to finish so that we do not interfere with numbers.

I was just thanking those who attended today's leadership meeting between the leadership of the Senate and the Parliamentary Service Commission (PSC). I was saying I was very happy to see the spirit of consultation and some of the discussions that went on this morning can help us resolve some of the issues that have been bedeviling this House for a long time and help us build synergies and relationships with the National Assembly and other institutions of governance. I hope, therefore, as we come back next year, we will have an environment that is better than we have had.

Having said that, Mr. Speaker, Sir, I want to take this opportunity to wish the Senators well and a Merry Christmas and a prosperous 2015. I also wish my fellow Kenyans happy holidays and a prosperous 2015. In spite of the national challenges that we are facing, Kenya is still a beautiful country. We want to rededicate and recommit ourselves to love, protect, nurture and defend our nation.

I will now lay the Statement on the Table of the House.

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

COMMUNICATION FROM THE CHAIR

REORGANIZATION OF BUSINESS ON THE ORDER PAPER

The Speaker (Hon. Ethuro): Hon. Members, because we have the numbers for voting, we will move to Item No.10 on the Order Paper. That Bill is just for the Mover to reply, if he can do it very briefly and then we move to the Committee of the Whole, then we can proceed with the rest of the business.

We are at Order No.10 now.

BILL

Second Reading

THE FERTILIZERS AND ANIMAL FOODSTUFFS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL No.36 OF 2013)

(By Sen. (Prof. Kindiki on 27.11.2014)

(Resumption of Debate interrupted on 3.12.2014)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I am here to reply. I will take not more than two minutes because, again, we do not want to interfere with the numbers we have.

I have followed the debate and generally---

(There was a technical hitch)

What is wrong?

The idea of regulating the fertilizer sector is not in dispute. The idea of creating incentives and compelling the Government to come up with a programme that supports farmers to access affordable fertiliser is not in question. However, I must point out one major issue that I have observed especially in yesterday's session of debate. The idea of creating a new board when we are streamlining the number of parastatals is something that many of those who spoke had an issue with.

My appeal is, let us not throw out the baby with the bath water. If the major problem is the formation of yet another bureaucratic entity, it is possible to proceed with this Bill, remove the issue of establishing a board and the policy guidelines that we want to turn into legislation can actually be pursued through a department or directorate of the State Ministry for Agriculture, Livestock and Fisheries. If the idea is about multiplicity of institutions, and I agree we have too many institutions, it is possible to turn the policy details of this legislation into legislative directives to be carried out by a directorate or department of the Ministry of Agriculture, Livestock and Fisheries, so that we do not create another body.

Mr. Speaker, Sir, having said that, I now beg to move that the Fertilisers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No.36 of 2013 be read a second time.

The Speaker (Hon. Ethuro): Order, Senators. I will ask the Clerk-at-the-Table to read out the Order and then I will get the Majority Leader just to say "I beg to move" We skipped that step.

(The Clerk-at-the-Table read out Order No.10)

(Sen. (Prof.) Kindiki spoke off the record)

The Speaker (Hon. Ethuro): Order, Majority Leader. You did not use the microphone.

Hon. Senators: You are not on HANSARD.

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

The Speaker (Hon. Ethuro): Hon. Senators, I, therefore, wish to put the question that the Fertilisers and Animal Foodstuffs (Amendment) Bill (National Assembly Bill No.36 of 2013) be read a second time.

I order that the Division Bell be rung for two minutes.

(The Division Bell was rung)

The Speaker (hon. Ethuro): Order! Order! Close the door and draw the Bar.

(The door was closed and the Bar drawn)

DIVISION

ELECTRONIC VOTING

*(Question, that the Fertilizers and Animal Foodstuffs
(Amendment) Bill (National Assembly Bill No.36 of 2013)
be now read a Second Time put and the Senate
proceeded to vote by County delegations)*

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Gwendo, Nairobi County; Sen. Haji, Garissa County; Sen. Keter, Kericho County; Sen. (Prof.) Kindiki, Tharaka-Nithi county; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr.; Sen. Ndiema, Trans-Nzoia County; Sen. Njoroge, Nakuru County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County, Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

NOES: Sen. Hargura, Marsabit County and Sen. (Dr.) Khalwale, Kakamega County.

The Speaker (Hon. Ethuro): Order Senators! The results of the Division are as follows:-

AYES: 26

NOES: 2

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 26 votes to two)

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

The Speaker (Hon. Ethuro): Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE NATIONAL POLICE SERVICE (AMENDMENT)
BILL (SENATE BILL NO.29 OF 2014)

The Temporary Chairperson (Sen. Murkomen): Order! Order, hon. Senators! We are now in the Committee of the Whole to consider The National Police Service (Amendment) Bill (Senate Bill No.29 of 2014).

(Several Senators walked out of the Chamber)

Order! Order, Members! We need the numbers. We will not waste any time. In not more than ten minutes, we will have voted again.

I hope that you can see a Supplementary Order Paper on your table. It has two amendments.

Clause 2

Sen. Haji: Mr. Temporary Speaker, Sir, I beg to move:

THAT, Clause 2:- of the Bill be amended-

(a) “by deleting paragraph (a) and substituting therefor the following new paragraph-

(b) by deleting subsection (1) and substituting therefor the following new subsection-

(1) The National Police Reserve (hereinafter referred to as “the Reserve”) shall consist of such persons resident in Kenya (other than serving members of the Kenya disciplined services) who shall –

(a) be at least thirty years and not more than sixty years of age;

(b) be persons of good conduct and have no criminal record;

(c) be medically and physically fit; and

(d) have the ability to read and write.

(c) by deleting paragraph (b);

(d) by deleting paragraph (c); and

(e) by deleting paragraph (d).”

The essence of this amendment is to ensure that the National Police Reservists (NPR) are mature people with the basic communication skills to be able to communicate with the community.

This amendment seeks to delete the proposal which has already been incorporated at Section 41(b) of the National Police Service (Amendment) Act, 2014, which was assented to on 26th June, 2014.

Further, this seeks to amend the Bill by:

(c) deleting paragraph (c);

The rationale is that this amendment seeks to delete the proposal which mandates the KPRs to secure the country's border, which would be in contravention of Article 243(1) (3), of the Constitution which mandates the defence forces to protect territorial integrity.

The Temporary Chairperson (Sen. Murkomen): Order, Chairman. What are you reading now? Or are you explaining?

Sen. Haji: I am explaining.

The Temporary Chairperson (Sen. Murkomen): Okay, continue.

Sen. Haji: By deleting paragraph (d), the rationale for deleting is, this amendment same as the earlier proposed amendment seeks to delete the proposal, which has already been incorporated at section 41(c) of the National Police Service (Amendment) Act, 2014 which was assented to on 26th June, 2014.

Should I continue with Clause 3 or we dispose this amendment?

The Temporary Chairperson (Sen. Murkomen): No, Chairman, we are only dealing with Clause 2 now. We will come to Clause 3.

(Sen. Hargura stood up in his place)

Order, Sen. Hargura. Wait!

(Question of the amendment proposed)

Sen. Hargura: Mr. Temporary Chairperson, Sir, the amendment which you have proposed to Clause 2, some of them may not be possible to meet like saying that a police reservist should be able to read and write. These are people who work within communities who are illiterate; 80 per cent illiteracy levels. They are actually taking this responsibility for their own security. Most of them have not gone to school, they are just herdsmen. So, this clause will not apply. So, we are putting in a law which will not be implementable on the ground. Even the age of 30 years age, may be---. Initially it said age 18 years; 18 years of age might be on the lower side.

Maybe from 25 years of age onwards would be more appropriate because we know their age. Most of those herdsmen are young men. In fact, we normally have some age-set system, whereby, once you marry, you kind of leave that service of taking care of the community, security-wise. I would like it to be from 25 years of age because from 30 years, that would be a bit late. The reading and writing requirements should be removed because we will not be able to implement that law.

(Sen. Bule stood in his place)

The Temporary Chairperson (Sen. Murkomen): Order, Sen. Bule. Why are you standing? Can you ask your neighbor how to go about it?

Sen. Ndiema. Thank you, Mr. Temporary Chairperson, Sir. I think what is intended to do, is to really ensure that members of the public participate in security. Putting so many requirements, as if again we are recruiting another police force, is not necessary because those who are now there doing it, some of them are even beyond 50 years of age. I believe Patrick Shaw was not so young. He continued being a police reservist. So, the issue of age and qualification in terms of education should not be brought in. It should be dropped; it should be just somebody who is physically able. Some of them may not even be physically able but they are able to gather a lot of intelligence. So, let this recruitment be left to the discretion of those who will recruit them. Some of them may be disabled but they are very useful.

The Temporary Chairperson (Sen. Murkomen): Chairman, you will wait so that you react to all of them.

Sen. Lesuuda: Mr. Temporary Chairman, Sir, on the same lines, I think the importance of this amendment is to look at the working structure as it is right now. I do not think it is something totally new. We have the police reservists in some of our counties. We understand, just as Sen. Hargura has said, that we know how it works. We know that the majority of the people who have offered themselves to work for the community and to protect the communities or to deal with the security of the communities, most of them do not know how to read and write. Probably, those who know how to read and write will go and look for other jobs and not necessarily do the work of a reservist. So, this whole issue of having the ability to read and write, I want to echo that it is something we need to look at. Probably, it should not be there. Even putting the limit of 60 years of age, there are people who are 60 years of age and they are doing the reservist work even now. So, what are we saying; that they go on retirement when they are the people who understand the whole terrain? The age issue and the ability to read and write is something that we need to re-look at. I would propose that it actually be deleted and done away with.

(Sen. Bule stood up in his place)

The Temporary Chairperson (Sen. Murkomen): Sen. Bule, listen, Order! You need to talk to Sen. Mutula Kilonzo Jnr., to tell you how to go about it. You need your card to be on. Sen. Mutula Kilonzo Jnr. will assist you.

I see there is a lot of interest in this matter. I will give you two minutes at most.

Sen. (Prof.) Lesan: Thank you, Mr. Temporary Chairperson, Sir. I want to share and express my views as regards one specific item here which is the ability to read and write. We should not remove this requirement because of the very nature of how things are going on at the moment. We should not delete the requirement for reading and writing because the times are not static. We should include this as some of these people who are

causing trouble in these areas have some education. They can actually communicate. In fact, the intelligence that we want here is the intelligence we want to share, either through Short Messages (SMS) and this will be very useful because, the thugs themselves will be sharing this information using these kinds of gadgets.

If we have these people who are not able to do that, then, they are completely disadvantaged. We should be able to put such criteria here, so that we can stretch or reach out to them as a way forward, so that we are not left static with time and say: “Okay, if we do not have education, we will stay like that” We should use every one of those people in these areas who have some education to uplift the quality of the reservists who are operating in this area to try and improve the security. Forward looking, this requirement is really very good. Probably with time, it is going to be very useful in these communities. It is not that there will be no educated people in these communities over time as we go on, there are going to be several of them. We should have this requirement here.

Sen. Obure: Mr. Temporary Chairman, Sir, my understanding of the objective of this Bill is that we are giving them some recognition. They are going to be benefitting out of public funds. While I may appreciate the need to remove the age requirement, I do not understand why we should remove a basic requirement that the person should be of good conduct and have no criminal record. Why do you want to remove something like that? The man should be medically and physically fit. What kind of people are we envisaging? I would like some explanation on that.

The Temporary Chairperson (Sen. Murkomen): From whom? The issues that you are contesting were raised by your colleagues opposing the Bill. It is not part of the Bill.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, if I understood the spirit of this amendment sought by Sen. (Prof.) Lonyangapuo in so far as this is concerned, the purpose was to ensure that the persons who are recruited are not volunteers. Then the persons recruited will be trained by the National Police Service. The persons who will be recruited will also be given uniform and facilitated. Most importantly, these persons will be given a salary. Therefore, to insert a clause that they should be at least 30 years and not more than 60 years, this would be the first clause I have seen in recruitment law that proposes to set an age bracket. First and foremost, we will be violating employment laws and we will be creating discrimination. There are people in this country who are 18 years old and would qualify for this. If this Senate would make an amendment proposing that they should be at least 30 years, we would be violating our own standards.

Therefore, I am concerned that this would in itself be discrimination of people below the age of 18 years. From the standards proposed in the Bill in terms of training, the question of age would not limit anything because these people would be trained and through that, they could sieve people who are competent to work as police reservists.

Regarding the ability to read and write, the requirement for recruitment of the police, the army and any other disciplined force is not reading or writing. It is either you have a Kenya Certificate of Primary Education (KCPE) or a Kenya Certificate of Secondary Education (KSCE). When you suggest that they should be able to read and

write, you must also make another amendment of saying that there is another body to determine whether they can read or write.

The Temporary Chairperson (Sen. Murkomen): Your time is over.

Sen. Mutula Kilonzo Jnr.: I oppose the requirement on the ability of the reservists to read and write.

Sen. Bule: Mr. Temporary Chairman, Sir, the issue of security in Kenya is very paramount and it needs a lot of consideration. What we are discussing concerns police reservists who are locals. These people are supposed to deal with terrorists, bandits and criminals. Therefore, the issue of age is not applicable here. We have elders and youth who are illiterate but can do a good job. The issue of education cannot hinder security operations. We have employed men and women who are educated but they just go to class---

The Temporary Chairperson (Sen. Murkomen): Sen. Bule, you are opposed to the issue of limiting education and age?

Sen. Bule: Yes, because if you do that, you are eliminating some of us from getting this opportunity. Therefore, we still need a further amendment on this.

Sen. (Dr.) Machage: Mr. Temporary Chairman, Sir, Sen. Haji has wide experience on administration and matters of security. Hence the move to amend was informed. The limit on age maybe dropped because we have youth who are patriotic enough and want to serve and we have 60 year olds who look like 35 year olds. There are people who do not express their ages in appearance and they are ready to serve. So, we should drop that requirement.

The issue of education should be left the way it is because the amendment does not qualify what type of ability to read and write should be considered. The ability to read and write is a relative term and the word education does not mean necessarily you went to school. You may be illiterate but you know how to read a watch or a mobile phone. I do not think it should be removed. This person should be able to make a call which means he can read his telephone set. I do not think part (d) makes a lot of change to warrant being concerned about the ability to read. He has not said that he must be of primary school standard. It just says ability to read and write. The ability to read a telephone or ability to read a watch is also an ability to read. Therefore, I do not think it should be dropped. Let us consider dropping the amendment on the issue of age.

The Temporary Chairperson (Sen. Murkomen): If we listen to Sen. Haji, there will be no need to debate further because of what he has already explained to me.

Proceed.

Sen. Haji: Mr. Temporary Chairperson, Sir, I am ready to withdraw the Clause 1(a) which deals with age.

The Temporary Chairperson (Sen. Murkomen): Sen. Haji, for the record, could you read Clause 1(a)?

Sen. Haji: It says "at least 30 years and not more than 60 years old" I will leave it to be "at least 18 years and not more than 60 years".

The Temporary Chairperson (Sen. Murkomen): If you drop the amendment, let it be all of it. Drop the whole section.

Sen. Haji: Then I drop the whole of it.

The Temporary Chairperson (Sen. Murkomen): Sen. Anyang'-Nyong'o, I can see you want to talk again. Is it a point of order?

Sen. Sang: Mr. Temporary Chairman, Sir, is it wrong to change your mind midway? You may have supported a Bill but at a certain stage, you become inspired and you change your mind.

The Temporary Chairperson (Sen. Murkomen): Order, Sen. Sang. You can change your mind but at an opportune time. At this point, we are in the Committee discussing Clause 2.

What is it, Sen. Anyang'-Nyong'o?

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Temporary Chairman, Sir. I do not think that Sen. Murungi is correct. In fact, you can, by using one of the clauses bring down the whole damn thing; definitely.

The Temporary Chairperson (Sen. Murkomen): Order, Sen. Anyang'-Nyong'o. That is not parliamentary language. We are not discussing the "damn thing" but a Bill.

Sen. (Prof.) Anyang'-Nyong'o: I am sorry, I withdraw that. Let me say the following. It is not in order to say that I am out of order. I think I am quite correct to oppose the Bill noting the kind of qualities that the Bill has in particular clauses and if amended, makes it a nullity.

The Temporary Chairperson (Sen. Murkomen): I am assuming that you are opposing Clause 2. Until the time we are discussing the whole Bill, the correct assumption is that you are referring to Clause 2.

Sen. Haji: Mr. Temporary Chairman, Sir, I think professor is quite out of order because---

The Temporary Chairperson (Sen. Murkomen): I have already ruled him out of order. We have settled that matter.

Sen. Haji: I just wanted to say, although I was in the Opposition at that time, NARC never withdrew homeguards. They are still there even now.

The Temporary Chairperson (Sen. Murkomen): I heard professor very well; he said he was not sure. He thought that if we can take matters of public notoriety into account, we know that Waiganjo was there until the other day. So, I think you are right, Sen. Haji.

Before we come to Sen. G.G. Kariuki, it was Sen. Okong'o who was on the Floor.

Sen. Okong'o: Mr. Temporary Chairman, Sir, my concern was on part (b) which talks about training. The essence of passing this Bill is to give the reservists sufficient basic training but if you delete that part, you are defeating the purpose. These reservists are supposed to be trained, given uniform and firearms.

The Temporary Chairperson (Sen. Murkomen): Sen. Okong'o, we are no longer there. Part (b) was not supposed to be deleted.

Sen. Okong'o: It is indicated here.

The Temporary Chairperson (Sen. Murkomen): Which (b)? There are two (bs). You should be specific. Just go there and read for us which (b) you are talking about.

Sen. Okong'o: Well guided. There is part (b) which is saying:-

"by inserting the following new sub-section immediately after sub-section (ii)"

It further says:-

“such uniform and firearms and other facilities as maybe necessary for the executing of the mandate of the reserve police officers”

The Temporary Chairperson (Sen. Murkomen): Proceed.

Sen. Okong’o: I was saying that if we delete that, then we are killing the main purpose of the Bill. If these people cannot be trained, be given uniforms and firearms, then there is no purpose for the Bill.

Sen. Musila: Mr. Temporary Speaker, Sir, I think there is some confusion here. First, I want us to appreciate the role that the reservists have already played because they are there and they are playing a good role. However, on matters of education, we are trying to improve the service. If we say that anybody can become a reservist and then we have to train them, how do we train people who cannot read and write? I am suggesting that the issue of education be left at “read and write” because it is important that when we train them, they follow the training.

Secondly, I want to follow Sen. Okong’o’s argument. The idea was to improve the service by training and providing uniforms. Therefore, if this has to be deleted, then I think there is a mistake which you must address. We cannot improve the service by letting it go the way it is. We want to improve it by making sure they are literate, trained, provided with proper firearms and supervised but we cannot do that if this clause is not there.

Sen. G.G. Kariuki: Mr. Temporary Chairman, Sir, we are making a small job appear to be a big issue. The Committee on National Security and Foreign Relations had all the time to debate this issue in the morning. We agreed, as proposed by the Chairperson, that the discussions do not stop the House to decide on the contrary. The important thing is that as hon. (Prof.) Anyang’-Nyong’o said, he made some remarks because of the environment that he comes from. These are very important issues to some people. There are areas where you cannot find policemen or policewomen. I was under the impression, as usual, that the Third Reading did not require us to debate the entire Bill. The Third Reading requires us to make some observations on the Bill which have already been agreed upon at the Second Reading. If there are any amendments, these can also be stated.

I am talking about education and this is a very complicated issue. When our policemen and policewomen joined the police force, many things started going down. There are many people who decided to become soldiers from a very early age. Those people are not dictated by their status of education but the way they perceive their work. The issue of education is important. At the same time, we should not restrict this to persons of Form Four onwards. So, unless there are amendments being proposed, I propose that since we had said 30 years and above, the idea of homeguards is the best since they are the ones who understand an area. These people are not looking out to become chief inspectors or colonels because they will not be transferred anyway. These are people who are there to defend their parents or their people when the uniformed police are not around. It is important that we do not do away with the issue of age.

The Temporary Speaker (Sen. Murkomen): Sen. G.G. Kariuki that issue has already been dispensed with. The Chairman has already withdrawn. Therefore, it is not an issue of debate.

Sen. Lesuuda: Mr. Temporary Speaker, Sir, I want to speak on the same issue of committees. I want to say something very briefly. It is unfortunate that Sen. (Prof.) Lesan is not here. One of the problems we are experiencing in the ASAL areas where reservists play a key role is that most young men who are causing havoc right now have no ability to read or write. However, if we recruit them and make them more useful to serve their country, this may deal with the menace we are trying to solve right now. Therefore, I think this is in order. We should absorb as many as possible. They should be useful to this country and not the reverse. When we say that we only need people who can read and write from those areas, how do we deal with those who do not know how to read and write? That is precisely why there is a menace in this country.

The Temporary Speaker (Sen. Murkomen): Thank you. The only thing guiding the House is that the Chairperson had already explained that reading and writing is climbing down from the initial requirement of "O" Level. Reading and writing are the basic minimum requirement. You could be reading one sentence and probably can only write numbers from one to ten. That ambiguity was left. The issue remained at the discretion of the recruiting officers to determine what level is required.

Sen. Haji: Mr. Temporary Speaker, Sir, you are absolutely right. You will agree with us. The purpose of these homeguards in the reserve is to have people who are capable of defending their families, properties and neighbourhoods. These are also people who can communicate with them very well. In view of the issues raised by the Senator from Nyamira, I want to withdraw part "b" and "c" which is very important.

The Temporary Speaker (Sen. Murkomen): You have to read for the record so that the HANSARD can capture it. What does it say? You need to read what you are withdrawing. I am assuming that you are withdrawing the part that says; by deleting paragraph "b" and "c".

Are you withdrawing the two?

Sen. Haji: Absolutely, Mr. Temporary Chairman, Sir.

The Temporary Speaker (Sen. Murkomen): There being no other contributions, I will put a question at the end.

Clause 3

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

THAT, Clause 3 of the Bill be deleted.

The rationale is that this amendment is as earlier proposed. It seeks to delete the proposal which has already been incorporated at Section 47 of the National Police Service (Amendment) Act which was assented to on 26th June, 2014.

The Temporary Speaker (Sen. Murkomen): For the benefit of Senators, what does it say?

The Chairman is saying that there was an amendment that provided for payments. Mr. Chairman, could you approach my desk? For the benefit of the Members, you will read the relevant sections that you are referring to. For Members who are following this, it is important for you to follow keenly what the Chairman is going to present.

Proceed Chairman.

Sen.Haji: Mr. Temporary Chairperson, Sir, I am looking for Section 47 (c). This Section sets new ---

Without prejudice to Section 2, police reserve officers shall be paid such remuneration and allowances as the Commission shall, in consultation with the Salaries and Remuneration Commission (SRC) determine.

I said delete but I am now reinstating it.

The Temporary Chairperson (Sen. Murkomen): Thank you, Chairman. My understanding, for the benefit of those who are following is that, somehow an amendment to this Bill which was in the National Assembly almost crossed each other probably at the end of June 2014 while this one was introduced on 2nd July, 2014 where there is a similar clause which has been read by the Chairman which already provides for remuneration of reservists. That is why they are deleting it because it is superfluous. The Chairman has already read Section 47 which says that without prejudice to that one:-

“A reserved police officer shall be paid such remuneration and allowances as the Commission shall in consultation with the Salaries and Remuneration Commission determine.”

That was already placed. That is why it has been deleted. Therefore, since it has been done away with, there is no debate about it.

(Question of the amendment proposed)

I will put the Question at the end as well.

Clause 4, Title and Clause 1

*(Question that Clause 4, Title and Clause 1
be part of the Bill proposed)*

Since there are no amendments, we will also put the question once we determine that we have the necessary numbers to proceed.

Hon. Senators we will now go to Division. We will ring the Division Bell for five minutes before I put the question so that we put the question for Clauses 2, 3, 4, the Title and Clause 1. That is why we will ring the Division Bell for five minutes before I put the question.

(The Division Bell was rung)

The Temporary Chairperson (Sen. Murkomen): Whip, do we have the numbers? We do not have the numbers. Sen. Haji!

PROGRESS REPORTED

THE NATIONAL POLICE SERVICE (AMENDMENT) BILL,
(SENATE BILL No.29 OF 2014)

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Sen. Haji: Mr. Temporary Chairperson, Sir, I beg to move that the Committee of the Whole on the National Police Service (Amendment) Bill, (Senate Bill No.29 of 2014) do report progress and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Speaker (Sen. (Dr.) Machage): I can see a request for a point of order by the Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I do not know whether it is appropriate. My point of order is to do with the Order Paper. I was assuming that we had finished this Order.

The Temporary Speaker (Sen. (Dr.) Machage): You are completely out of order; we have not finished. Have a seat.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Much obliged, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Chairman!

REPORT

THE NATIONAL POLICE SERVICE (AMENDMENT) BILL (SENATE BILL NO.29 OF 2014)

Sen. Murkomen: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the National Police Service (Amendment) Bill (Senate Bill No.29 of 2014) and has instructed me to report progress and seek leave to sit again tomorrow.

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

(Question proposed)

(Question put and agreed to)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, sir, I rise on Standing Order No.39 to request the Chair if it is in order to direct that we dispense with Order No.8, the reason being that it is a very short Motion that is not

controversial and I do not intend to take more than two minutes so that the other items on the Order Paper may take a little more time. I thought if it is possible, we can dispense with that Order.

The Temporary Speaker (Sen. (Dr.) Machage): Very well! I order that we move to Order No. 8.

An. Hon. Senator: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Order, just relax, you will be informed in due course by your neighbor, as he has put it earlier.

Proceed, Sen. (Prof.) Kindiki.

MOTION

APPROVAL OF NOMINATION OF SENATORS TO SERVE IN SENATE COMMITTEES

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

THAT, pursuant to Standing Order Nos. 177 (1) and 178, the Senate approves the nomination by the Rules and Business Committee of-

- a) Sen. G.G. Kariuki to the Standing Committee on Finance, Commerce and Budget;
- b) Sen. Ben Njoroge to the Standing Committee on Labour and Social Welfare to replace Sen. G.G. Kariuki; and,
- c) Sen. Hosea Onchwangi to the Sessional Committee on Implementation to replace Sen. Ben Njoroge.

This Motion does two things: One, to acknowledge that, initially, the Jubilee side had nominated Sen. G.G Kariuki to sit in the Labour and Social Welfare Committee. Sen. G.G Kariuki did not take up that position because he wanted to serve in the Finance, Commerce and Budget Committee. By the time his decision not to serve that Committee was reached, we had already approved the Motion on committees. This Motion, therefore, is to allow Sen. G.G Kariuki to serve in the Finance, Commerce and Budget Committee, in which case he will be replaced in the Labour and Social Welfare Committee, as proposed in this Motion, by Sen. Njoroge.

Finally, to create a balance, now that Sen. Njoroge will be in the Finance, Commerce and Budget Committee, we have decided, as the Jubilee side, that Sen. Njoroge relinquishes his position in the Committee on Implementation. We have added Sen. Hosea Onchwangi, who is not in this House.

Hon. Senators: Who is Sen. Hosea Ochwangi?

The Senate Majority Leader (Prof. Kindiki): I am being asked who Sen. Hosea Onchwangi. He is the Nominated Senator for the majority side. We discovered that he is serving in only one Committee. When I interrogated him, he said that part of the reason why he does not feel very accommodated is because, unlike other Senators, he is the only Senator who is serving in one Committee. We are recommending Sen. Onchwangi to this Committee.

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

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. Haji?

Sen. Haji: Is the Senate Majority Leader in order to say that he is the only one, in one Committee? I am also in one Committee, so he is one amongst others.

The Temporary Speaker (Sen. (Dr.) Machage): Very well, he is completely out of order.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker, Sir. Maybe I should have said he is the only one in one Committee who has complained. I did not know that the Chairman of the National Security and Foreign Relations Committee is also in one Committee. Sen. Onchwangi assures me, and I am now delivering this to Hon. Senators, that he would like to serve in two or three committees, so that he feels accommodated. We see no reason why we should not give him that opportunity. So, without much *ado*---

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

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

Sen. Murkomen: Mr. Temporary Speaker, Sir, I often see Sen. G.G Kariuki seated here. Sen. Njoroge was seated here, he just walked out. Can the said Sen. Onchwangi also show some passion in terms of wanting to join that Committee by even being here when such an important Motion is being moved? Is he aware of this movement?

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Murkomen, there is no rule that dictates that a Senator must be here when he is being recommended for a certain Committee. I rule you completely out of order.

Continue, Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker, Sir. So, because this is a straight forward matter, I beg to Move.

I want to request the Deputy Minority Whip, Sen. Janet Onger, to second.

Sen. On'gera: Thank you, Mr. Temporary Speaker, Sir, I second this Motion. I think this is a fairly straight forward matter. The Senators who have been nominated are capable and fit to be in those committees. Therefore, I do not have much to say other than to second this Motion.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. (Dr.) Machage): Let us move to the next order.

BILLS

Second Reading

THE COUNTY RETIREMENT SCHEME BILL (SENATE BILL NO.25 OF 2014)

Hon. Senators, Order No. 11 is deferred

(Bill deferred)

The Temporary Speaker (Sen. (Dr.) Machage): Ladies and gentlemen, before I call for the next order, I would like to bring to your notice the following information. We have run out of time and we have an adjournment Motion. If we do not move and second the two Bills, they will die but if you will agree with my advice that I give an opportunity to move in a very short time and I will time it to not more than ten minutes, then, it is seconded by bowing, I propose the question, the House will own those Bills and they will not die. However, if you agree we do that, then, we will quickly move to the next two Motions, so that we have enough time for the important Motion of Adjournment which requires two hours and we are late.

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. Considering that Bills are our forte in this House - it is what we eat and breath - Am I in order to say that, although the adjournment Motion requires a maximum of two hours, that through your powers under Standing OrderNo.39, we reduce the adjournment Motion for an hour so as it starts at 5.30p.m? These are Bills and someone has prepared for a long time, we give the Mover at least 15 minutes each to submit, let them be seconded for five minutes because we are here because of Bills. Then, we shorten the adjournment. There is nothing much for us to say in terms of adjournment more than the Bills.

The Temporary Speaker (Sen. (Dr.) Machage): Yes, Sen. (Prof.) Kindiki.

The Senate Majority Leader (Sen. (Prof) Kindiki): I rise on a further point of order to support the suggestion by the Senator for Elgeyo-Marakwet, the reason being, my understanding of the adjournment Motion under Standing Order 28 is that it should not take more than two hours. So, it can take a shorter time. Instead of taking a lot of time on an adjournment Motion, when we have Bills, I just wanted to support, if it is in order, for you to direct that we spend a little more time on the Bills.

The Temporary Speaker (Sen. (Dr.) Machage): Very well, you are in agreement with the proposals by Sen. Murkomen and supported by Sen. (Prof) Kithure Kindiki. I agree, the movers of the two Motions, please look at the time. I will not put the question to that because I do not want it to enter into the records.

Next order!

Second Reading

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

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, I beg to move that The Potato Produce and Marketing Bill (Senate Bill No.22 of 2014) be now read a Second Time.

Mr. Temporary Speaker, Sir, this Bill has taken a bit of time since it was filed. However, it is good that it has finally found its way on the agenda today.

The Temporary Speaker (Sen. (Dr.) Machage): As you start, I want you to look at the clock.

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, I will take 18 minutes.

The Temporary Speaker (Sen. (Dr.) Machage): The suggestion was 15 minutes. I did not want this to be a contentious issue.

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, I will determine what to leave out.

Mr. Temporary Speaker, Sir, we produce in Kenya 1.8 million tonnes or thereabouts of potatoes as a crop and food item. If you compare it with maize, at 3.5 million tonnes – as per the statistics of 2012 – that places potatoes at number two staple food. Even if you compare it with other food crops like wheat, at 285,000 tonnes, and rice, at 146,000 tonnes, you will know that potatoes are very important. However, the current farming of potatoes is really discouraging to farmers. There are a lot of challenges. It would have been good to describe every one of them, but in the interest of time, I will mention them generally.

Due to the perishable nature of potatoes, there are a lot of issues in it. The principal one is that the value chain time is only two or three days as compared to products like maize, which can be consumed even next year if it is harvested now. That perishable nature of potatoes poses a lot of challenges to the farmers. The Bill seeks to address most of these challenges. I would like to read the objects and purposes of this Bill as listed in Clause 3. It says:-

- (i) regulate production packaging, processing, marketing of potatoes and generally regulate the industry;
- (ii) promote the production and use by farmers of high quality seed potatoes;
- (iii) improve the production in terms of quality and quantity of potatoes in the country; and,
- (iv) improve efficiency of potato farming.

There is also “induce self-regulation across the industry,” which the Committee on Agriculture had a quarrel with. I agreed that it be deleted when it comes to the amendments.

Mr. Temporary Speaker, Sir, much as the Bill has taken a bit of time, it has successfully gone through the various stages, more so, a very successful public hearing which attracted a lot of interest from potato farmers, potato farmers organizations, dealers and research people. More importantly, the Government itself did send a senior representative from the Ministry of Agriculture, Livestock and Fisheries.

The Committee has looked at quite a lot of issues raised during the public hearings, among them the Government’s suggestion that instead of the committee or board which we had suggested comprising 15 members, it should have nine members. The Committee has already tabled its Report which contains a number of amendments and I, as the sponsor, have agreed, in principle, to all of them. So, we are in concurrence.

Due to the perishable nature of potatoes, there are few farmers or none that I am aware of who are really large-scale farmers. As a result, the farmers are prone to being played around with by all manner of middlemen. We start off with the farmland brokers, then we have the buyers and transporters. There are no standards as to the weighing of potatoes from farms. The brokers buy potatoes from farmers without them. They decide on a particular size of bag. The Government has attempted to put in place some weighing

standards, but they have not been properly policed. Since there is no regulatory body at all and given the perishable nature of the potatoes, the farmers have no choice. The farmers end up agreeing to sell their potatoes at any price. Much as the maize farmers may complain about bad prices, they can keep their crop for sometime while they wait for better prices. However, this is not the case with potatoes. If they were harvested in Nyandarua yesterday, by this evening, they are already on our plates.

Mr. Temporary Speaker, Sir, there are very few industries which will buy potatoes specifically by weight because of their nature. Therefore, there is no processing yet. If we are to go through what is suggested in this Bill, perhaps some inducement of processing will happen. Due to that awkwardness of not knowing at which weight a farmer should sell his potatoes, when we say “five or ten bags,” it has no meaning. The Government tried to set some regulations in 2005 through Legal Notice No.44, where the weight was set at 110 kilogrammes. However, it ended up just being a cat and mouse game between the farmers and transporters on one hand and the police on the other hand. The police will just ask for a kickback and allow bags with the wrong weight to pass. This has happened over the years. As a result, the farmers are now back to square one.

Mr. Temporary Speaker, Sir, recently, the Government announced that the standard weight will be 50 kilogrammes, not only for potatoes, but a whole range of other farm produce. The problem with potatoes and other similar products is that whereas you set the weight at 90 kilogrammes, there are big players who can either manufacture or organize to get bags to carry different weights. No one manufactures 50-kilogramme bags to carry potatoes. Therefore, although the Government announced these standard weights some three or so weeks ago, you will not find a 50-kilogramme bag anywhere in the country. Unless there is somebody from a Government department or body like the one that we are proposing in the Bill, to organize this packaging, not much will change. None of the farmers know what to do, much as the Government has set the weight at 50 kilogrammes, because there is no such bag.

On the other hand, the same law which the Government quoted to fix the weight also set a Kshs500 fine if you do not comply. The end result is that you do what you can and play a cat and mouse game with the police. It is just a new cash-cow for the police. If you go to Marikiti Market today, you will find that all the “*dusuras*” which were there before are the same. There is nobody from the Government to confirm the weights announced. Therefore, we need to have some regulatory body. The standard weight is just one item.

The next one is the standard of the product itself. At the moment, we do not have any standard at all. We have got eight or ten different varieties of potatoes. But because of lack of a regulatory body, you cannot tell which standard you are dealing with. As a result of that, we, as a country, have completely shut off ourselves from the export market which is very strict on standards.

The other problem is the yield per acre or hectare. Today in Kenya, the average production is around ten tonnes per hectare, which is about 30 bags or so. However, if you compare with other countries, Netherlands, for example, at the moment it is at 45 tonnes per hectare. This is roughly 120 bags. New Zealand is producing about 70 tonnes

per hectare, which is close to 200 bags. Even Egypt which is a desert, is at 25 tonnes per hectare, more than double what Kenya is doing.

Therefore, the question is: What is it that we are doing wrong in Kenya? There is something we are doing wrong. This Bill attempts to address some of these things which are wrong. One of them is the issue of seed. If you look at all the staple crops, be it maize, wheat or rice, the Government has a way of providing certified seeds to farmers. With the potatoes, there are only two or three serious seed farmers at the moment. The use of certified seed is less than two per cent as per 2012 statistics. I was informed by experts in this field that by simply using the certified seed, you can easily double the product even before you come to other measures.

Mr. Temporary Speaker, Sir, I talked about the standards from the product to the type itself. There is also the grading. We can also enter the export market which is completely shut off for the country at the moment. The people dealing with the export market are from European countries. Netherlands is already doing a million tones. It has about the same production as Kenya. However, we cannot export because we do not have these standards.

In the interest of time, I want to cut out the major issue of storage, due to the perishable nature of the crop. We need an organization which can guide on how we can institute measures of storage in Kenya, so that these two or three days cycle can become six months or more. Farmers can, therefore, reap benefits for their sweat and we can attract investment into that area.

The Bill proposes a body which is called the National Potato Council. The Committee proposed a change of that name to Potato Board of Kenya, which I agreed to. The reason is that there is a private company called the same name; National Potato Council of Kenya, who I believe is doing a good job in the agricultural sector. Nonetheless, it is a private company. We now want a public body which can handle these things.

Mr. Temporary Speaker, Sir, I am aware that Members are somewhat averse to parastatals and such authorities. However, I do not know what the real alternative is because if you look at other sectors, for example, the Ministry of Education could have a department minding the syllabus and school curriculum. It is easier to have the Kenya Institute of Curriculum Development (KICD) to do these things. The Government can easily have a department or a section dealing with standards. How do you set up a parastatal or a state corporation called Kenya Bureau of Standards to do these things? The Ministry of Agriculture, Livestock and Fisheries could have a department doing research and so on. It is easier to have the Kenya Agricultural Research Institute (KARI), because it is a specialized body with special knowledge and handling needed.

For the same reason, I would like to persuade Members of the Senate that there is nothing wrong with parastatals. We may not overdo it. Even the AFA law did not totally outlaw that you cannot have parastatals. When we say “maize board” or “coffee board” and you do not want that and you create AFA law and directorates---

The Temporary Speaker (Sen. (Dr.) Machage): I hope you acknowledge the yellow light.

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, I am just about to conclude. I have to shorten quite a lot of what I wanted to say.

My last submission on this is an appeal to the Government now. It has already announced the 50 kilogramme weight on all products. However, potatoes and other similar products have also got another special problem. If you put 50 kilogramme, the nature of the product is that you also have to see it. You have to see whether it is white or red. It is not like maize where you can seal and put a label. The value chain time is too short for all those procedures. Therefore, I would like to appeal to the Government to suspend for a while, maybe two or three months, until hopefully the Senate or Parliament has passed this law, so that there is a body to handle these things technically with some expertise and be able to do it. Everybody, including the farmers have no problem with the new standard weights at all. However, there is no one providing the containers which would be able to do that.

Mr. Temporary Speaker, Sir, with those few words, I beg to move that the Potato Produce and Marketing Bill be read a Second Time. I request Sen. Murungi to second the Bill.

Thank you, Mr. Temporary Speaker, Sir.

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

Sen. (Eng.) Muriuki: Sen. Murungi was lined up, but I can see there is somebody else.

The Temporary Speaker (Sen. (Dr.) Machage): Yes, Sen. Musila. He mentioned your name.

Sen. Musila: Mr. Temporary Speaker, Sir, I stand to second this important Bill. It has taken over 50 years to come to this House. I want to congratulate Sen. (Eng.) Muriuki for coming up with such an important Bill. Potato is a very important food crop. If potato is farmed properly in this country, it has a potential of giving food security to the entire population of Kenya because some areas produce a lot of potatoes. A good example is Holland which has been mentioned here. However, lack of proper regulation and a body that looks after, advises farmers and even provides them with seed has made it impossible for this important crop to develop in this country.

Mr. Temporary Speaker, Sir, once upon a time, I was a farmer. I want to confirm what Sen. (Eng.) Muriuki has said. I lost a lot of money because I could not market my potatoes. I kept a mountain of potatoes waiting for buyers, but because potatoes are perishable, I incurred a lot of losses. From that day on, I said I would never farm potatoes because there is no way to regulate, provide market, grade potatoes or even provide proper seeds. You produce potatoes and put back the same potatoes to the soil. How do you expect a good crop? So, I want to appeal to the hon. Members to support this timely Bill.

Mr. temporary Speaker, Sir, there is the issue of weight. When I was the Provincial Commissioner (PC) of Central Province, where potato crop is grown in abundance, I tried to plead with farmers not to increase the size of the bag. They used to put potatoes in a bag and then put sticks around it and put another half a bag. Definitely, this was not one bag. It was a bag and a half. The whole idea is to convince the buyer that this is the biggest quantity, therefore, they should buy it. Therefore, the answer here

also lies with the farmers. If farmers had formed a co-operative society and insisted on the weight, then nobody would add another bag on top of the ordinary bag. I am sure we would have controlled this. However, since farmers want money because potatoes are perishable and they cannot wait, they keep on increasing the bag to the extent that sometimes it is not even a bag and a half, but two bags. If the issue of weight, quality control and providing quality seed is sorted out, this country will provide full security for its people, additional potatoes for export and it will increase its wealth immensely.

Mr. Temporary Speaker, Sir, it is a shame that as an agricultural country, we have neglected such a good potential crop that can eliminate hunger in this country. I urge hon. Senators to support this Bill with a few amendments to give the necessary legal backing to this important crop so that, at the end of the day, we will have an industry that promotes the well-being of farmers and this country.

With those few remarks, I beg to second.

(Question proposed)

Sen. (Prof.) Lesan: On a point of order, Mr. Temporary Speaker, Sir. From what we have heard when the Motion was being moved, there is a lot to say about this Bill. Therefore, to allow us to have more time to discuss it, I rise on Standing Order No.99, I now move that the debate be adjourned.

Sen. (Dr.) Zani seconded

The Temporary Speaker (Sen. (Dr.) Machage): Very well, I have looked at Standing Order No.99 as raised by Sen. (Prof.) Lesan and I think it is because of the time constraints. I will now put the Question.

(Question, that the Debate be now adjourned, put and agreed to)

Next Order!

Second Reading

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

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I beg to move that the Natural Resources (Benefit Sharing) Bill (Senate Bill No. 34 of 2014) be read a Second Time.

Mr. Temporary Speaker, Sir, you will recall that on 26th June, 2013, a Committee was put into place after a Motion was moved before this House regarding the issue of benefit sharing of natural resources. Having considered and knowing that each of the counties in this country have enormous natural resources, and given the fact that there is no system in place to ensure that there is an equitable share of those resources across both the county level and the community level, therefore, it is important to support this Bill.

This Bill suggests that a possibility be put across so that we can find a format where communities and counties can actually get a very direct analysis and find a way to have the natural resources benefitting them. When the Motion came on the Floor, it had slightly different mandate from what it has ended up doing. Initially, we were to create and look for the percentage of priorities that should be paid. We were also meant to look at the revenue, how it is accrued and any other relevant issue.

Mr. Temporary Speaker, Sir, as we moved on with the work of this Committee, we decided to find a redistributive formula for the resources that have been put into place, then it will make it possible for this Committee to do its work within the three months time given.

Mr. Temporary Speaker, Sir, allow me to mention the Members of this Committee in a way of thanking them and appreciating their work in producing this Bill. They are:-

Sen. (Dr.) Agnes Zani	-	Chairperson
Sen. Kimani Wamatangi	-	Vice-Chairperson
Sen. Mositet	-	Member
Sen. Mwakulegwa	-	Member
Sen. Boy Juma Boy	-	Member
Sen. (Prof.) Lonyangapuo	-	Member
Sen. Nabwala	-	Member
Sen. Chelule	-	Member
Sen. Sang	-	Member
Sen. Obure	-	Member
Sen. (Dr.) Machage	-	Member
Sen. Murkomen	-	Member
Sen. Ndiema	-	Member
Sen. Wako	-	Member
Sen. (Prof.) Anyang'-Nyong'o	-	Member
Sen. Hassan	-	Member

Mr. Temporary Speaker, Sir, as a result of the work of this Committee, we not only came up with a Bill, but also with a policy framework because we realized that it is important to do so. At an earlier date, we tabled a report from this Committee that constituted that particular policy framework. Today, I am happy that I am able to move this Bill which is a result of the Committee. I also realize that this is an important issue for Kenya. If it is contextualized within the Constitution, especially in the principles of devolution at Article 174 which recognizes the right of communities to manage their own affairs and their development, there will be equitable distribution of resources in this country.

There is need to promote and protect the interest and rights of minorities and marginalized communities. There is also need to promote social and economic development and the provision of easily accessible resources throughout the country. Lastly, there is need to ensure equitable sharing of national and local resources throughout Kenya. Indeed, this Bill is within the nexus of what the Constitution stipulates. More recently, we found out that in counties such as Turkana or Kwale, there

are enormous resources. It is our belief that these resources will change the way people live in these counties and entire country.

In Turkana, for example, there is oil. We are talking about almost 600 million barrels of oil and underground water that is of immense value. Therefore, we see a lot of hope in Kenya in terms of the way these natural resources are used to change communities and counties in matters development both economic and social and make a difference in this country.

Mr. Temporary Speaker, Sir, Article 69 of the Constitution also talks about the sustainable exploitation, utilization, management and conservation of the environment which this Bill also considers. There is also need to protect intellectual property and the need to utilize the environment and natural resources for the benefit of Kenya. This Bill is also contextualized in Article 203 of the Constitution. Currently, the revenue given to the counties is not enough for them to attain their social and economic development. Therefore, this Bill comes as an innovative way to ensure that communities in their God-given right are able to utilize their resources. We felt that if we have a unified fiscal framework and a way to mobilize so that the money is taken to the communities, it will make a big change.

Mr. Temporary Speaker, Sir, because of time, I will not go into the details of where the resources are found because we have discussed this before. This Bill touches on each and every county. For example, in the western region, we have gold. In the coastal region, we have the rare earth and building stones at Mrima Hills. We also have iron ore in the eastern region. Therefore, in all counties, we have natural resources that can benefit our people.

Mr. Temporary Speaker, Sir, we have several minerals like energy, metallic minerals and so on. All these are used in various construction industries, aerospace construction and things like that. We are also looking at wind and water resources in the production of electricity. What we discovered is that there is no fiscal framework that is unifying on the issue of natural resources. Our legislation brings together with various legislations that have been put into place that deal with various sectors. We have sectoral differences across natural resources. We also have statutes and acts in different sectors that might not have a coherence in terms of how that management should be done. That is what we are trying to solve. For example, we have the Lands Act, the Forests Act of 2005, the Wildlife Act of 1976 which is under review. Therefore, we need to find a way of putting these Acts together. We decided that one way of achieving that is to allow the sectors to operate as they are. In sectors where a fee is charged, it should continue to be charged as per the specific law. What we are advocating for is that once the money is there, it should be put into a fund where redistribution should take place.

Mr. Temporary Speaker, Sir, we visited 9 counties in total; Machakos, Kajiado, Narok, Kiambu, Nakuru, Taita Taveta, Kwale, Turkana and Elgeyo-Marakwet. Our visits were to make sure that this is an inclusive process. We talked to investigators, investors, community members and leaders. We asked them questions about the proposal of the percentage that they thought was appropriate. We wanted to feel that this Bill will address issues that are important to them.

Mr. Temporary Speaker, Sir, if I turn to the Bill specifically, it has a total of seven sections. The seventh section is the miscellaneous provisions. I will go through them very quickly, then highlight the specific aspects of the Bill that we need to consider even as we begin to debate it. In the beginning, we have the short Title and the preliminaries. Then we have the establishment of the Benefits Sharing Authority (BSA). This is, probably, one of the strengths of this Bill because we give this BSA the mandate to control this sector. We have made it a very powerful authority in terms of the personalities who will be there. There will be a chairperson who will be nominated by the President, but vetted by the Senate. We have given high educational qualifications. We expect that each of those people in that Board should have a university degree. We have also included sectoral interests from the manufacturing firms so that they can be on board. We have also tried to make that Board bottom heavy so that we have members of communities who will have a say.

Mr. Temporary Speaker, Sir, part three tackles the whole issue of the management of the BSA. It gives the details about that. It also tackles the collection of the royalties and fees that I will talk about briefly and expound on. The county benefits agreements that will be very critical in preparing and setting the pace for the collection of the monies. Then, we have a section that deals with the financial and miscellaneous provisions. We felt that if we have all these coming together, so that we do it in a very organized way, then we would be creating order in a sector that operates in very different and diverse space. This is to ensure that they all operate within one space.

In the first part we have the various definitions. We have tried to put into place the key definitions that are critical in explaining this Bill. In Part 3, there is definition of the natural resources that are included in this particular Bill. They are mentioned there. Again, because of time, I will not mention them. However, we have made a provision in Part 2, that there is a sense in which other natural resources not specified in this section can also be included. We are cognizant of the fact that Article 260 of the Constitution also gives a summary of the natural resources. However, through our sectoral engagement with members of these sectors, we know that the list can never be exhaustive. In future, we might end up having other new natural resources that have not been discovered hence we want to open it up.

Mr. Temporary Speaker, Sir, Part 2 is the establishment of the BSA. We will have a corporate body and operate in all matters corporate as sustained by the law. Some of the important functions will be to coordinate the preparation of benefit sharing agreements between local communities and affected organizations, identify counties that are required to enter into a benefit sharing agreement for the commercial exploitation of natural resources. It will also conduct research regarding the exploitation and development of natural resources. It will also deal with determining appeals arising from conflict regarding the preparation and implementation of the county benefits agreements.

Looking through the functions, and I have just mentioned a few, we put this BSA in charge of ensuring that the whole sector of natural resources is well coordinated and organized in a systematic manner. In Clause 3 we are saying that it shall in its performance under the functions take into cognizance existing laws. These are the ones I had mentioned earlier. For example, if we have a Forests Act or a Water Act that has

already put charges and stipulations that are already being paid, those ones need to be adhered to.

The management of the authority and the details of who is going to be in the BSA are given in Clause 17. However, because of time, I will not go into it. Clause 8 talks about the trustees of the office, *ex officio* members, the chairperson and members of the BSA. They will also be paid by the Salaries and Remuneration Commission (SRC). They will sit on a part time basis so that we avoid the whole idea of costs.

Mr. Temporary Speaker, Sir, Clause 11 delves into the whole issues of the powers and functions of the BSA, how they can enter into contracts and open bank accounts. We have tried as much as possible to give clauses in this Bill that will enable this BSA to have the necessary power that will be critical for them to run and make this functional.

I want to go to the section of collection of royalties and fees. In Clause 24, there is a provision that has been given that the BSA shall have the power to determine and review the amounts of royalties. This is a dynamic sector and we do not want the royalties that are paid now to remain as they are. We are talking about royalties, charges, fees *et cetera*. That is why instead of talking about royalties, we are talking about benefit sharing so that we do not just focus on the monetary aspect. We also focus on other diverse aspects.

Mr. Temporary Speaker, Sir, allow me to quickly move to the proposal that we are making in terms of the revenue sharing. The revenue sharing proposal is that of the 100 per cent that will enter into the kitty. We are proposing the 20 per cent go into a sovereign wealth fund and 80 per cent be divided between the county and the community. Of that 80 per cent that will go to the county and the community, 60 per cent should go to the national Government and 40 per cent should go to the county. Of the 40 per cent that goes to the county, 60 per cent goes to the county in totality, but 40 per cent goes to the ward.

In the earlier stage of the Bill, we have identified the immediate community as a ward so that they feel that as a result of that exploitation, they gain directly. We have also given other provisions, for example, that have been raised by stakeholders where a natural resource bestrides two or three counties, then the BSA will be in charge to ensure that they are able to solve all the problems.

This Bill creates a tier system in terms of management of natural resources starting with the BSA at the national level and then at the county level we have the County Benefits Sharing Committee. At the community level, we have the local community forum for benefit sharing. In each of those, we have tried as much as possible to get community members so that the dynamism of the problems that come as a result of the sharing of natural resources can be dealt with at the specific levels. Each of the issues that come up can be tackled in advance rather than being left to create a particular problem that might create a situation that might make it very difficult to manage these natural resources. Therefore, the idea of the fund is very critical. Clause 34 stipulates the fund, the running of the fund and how that fund will be specifically managed.

Mr. Temporary Speaker, Sir, on the distribution framework, I will touch a bit on the Mining Bill that might be coming to the Senate which restricts itself to mining. We

need to note that the natural resources benefit sharing is broader because it talks about all the natural resources. Proposals have been given in the Mining Bill that suggests the sharing of 70 per cent at the national level, 20 per cent at the county level and 10 per cent at the community level which is different from what the Bill has recommended. However, we feel that we only have a 10 per cent difference. It is possible that once we have a distributive framework, we can make it work. This is because as the Mining Bill 2014 stands, it does not offer a formula as to how the redistribution will be done to the community and to the county. It only gives an allocation of how much there is, but how it will be distributed has not been put in place.

We need, therefore, to find a way and mechanism to ensure that when the money is in the kitty, whichever kitty, the Kenya Revenue Authority (KRA) will be in charge. The Bill proposes collecting and consolidating these figures; that once the money is within this one particular kitty, then we need to agree across all the sectoral interests what proportions will be put at the different factions at the community, county and the national levels to ensure that communities gain from what is expected of them.

With that, we need to be very clear that this is not a Money Bill. In this Bill, we are not talking about the appropriation of funds and how that appropriation needs to be done. However, we are just giving a formula for redistribution that we believe will change counties and communities for ever.

I beg to move that this Bill goes into the Second Reading. I would like to request Sen. Murkomen to second this Bill.

Sen. Murkomen: Thank you, Mr. Temporary Speaker. I would like to support this Bill. This is a Bill that I have a lot of passion for. This is mainly because the Mover of the Bill beat me by a week. I was about to move a similar Bill, but she went ahead of me. I was amazed that we had the same intentions and desires to make differences as far as natural resources are concerned. One of the things I wrote down in my manifesto, to the people of Elgeyo-Marakwet, was that this House should be part and parcel of a team that would pass a legislation to ensure that they benefit from natural resources.

Mr. Temporary Speaker Sir, you, I, the Mover and other Senators were in Elgeyo-Marakwet and heard the sentiments of the people who are living within Fluorspar mines. For a long time in this country, we had natural resources coming to chase the local people. Most areas with natural resources turn out to be the poor areas. In most cases, people who live in such circumstances are deprived of land. I have a list of over 2,000 people who were removed from a Fluorspar area and given no compensation. They were told that natural resources are public resources and were chased away from their land. Up to now, they have no land.

The other problem we have is the degradation of land or negative impact of exploitation of natural resources in areas like the ones with Fluorspar. The implications go to farmers and people who live in those areas. Many farmers have lost their livestock, for example, along Kerio Valley as a result of mining fluoride. This Bill is very personal to me. I believe that people in Turkana County where Tullow Oil Company is exploiting oil will benefit. In my county, Elgeyo-Marakwet and Baringo County, you will find that such legislative framework is key if we are to avert a situation where the locals feel left out.

The problems we have in places like Kapedo are related to historical marginalization. This has made the people in those localities to feel that things are being done to please “us versus them.” This is the Republic of Kenya versus the local communities. I dare say that without this kind of legislation, it will be dangerous for this country to go blindly and exploit resources, particularly in marginalized areas; the arid and semi arid (ASAL) lands which are full of bandits. These places have been left out for a long time. There is danger that those who live in Nairobi or those who come from Kenya, have gone there to take away their resources. Telling them that we have a way to solve this problem will assist us a great deal.

Sometime last year, I had the privilege and honour to escort President Goodluck Jonathan who hails from the Delta region in Nigeria. In our discussion, he happened to read a newspaper article that showed that we had struck a lot of oil in Turkana. He asked me what we were doing about it. He told me that in Nigeria, they had a similar law. He said that the law came about long after there had been a lot of fights in the Delta Region. So, it is important that before we exploit resources like oil or any other natural resource, we need to have a law. We need to have a law prior to exploitation of any natural resource in this country.

Globally, it is necessary for locals to feel appreciated and that they also benefit. Their children should use the resources that are exploited from their area. The roads used by the community should be developed. The roads and electricity should also be installed and investments of high magnitude done. That is why I am very happy. There are proposals in this Bill about establishment of the BSA. They talk about its functions. However, the critical part that will interest Senators as they prepare to make contributions is Part IV which talks about collection of Royalties and Fees and how these will be shared in Part V.

Sharing is very important. The resources that have been left are about 80 per cent. When the Mover was moving this Bill, many people felt that this was a complex mathematical formula. However, it is important that we have something that breaks down the resources to an amount that is determinable by the locals so that we continue negotiating on the Floor of this House as we debate as to what exact figure would be necessary in assisting our communities to move forward.

Mr. Temporary Speaker, Sir, a lot has been said this week about security. Security largely emanates from marginalization. Some areas are becoming a thorn in the flesh of the Republic. These are areas like Mandera, Turkana, Wajir, Marsabit and others which we have abandoned for a long time. They are becoming a pain because they are part and parcel of this Republic. If we want those areas to become safe, the solution is in this Bill. It is the manner in which we share resources and make the locals feel good and owners of the system. We want to see universities in Turkana, Tana River, Wajir and Mandera. We want to see Kenyans flocking there to study because it is safe. We need to invest in infrastructure and the things that make an area safe.

Mr. Temporary Speaker, Sir, as I conclude, this Bill is also critical in terms of our security. We saw some changes in the security sector. We saw my compatriot; village mate and ward mate, Mr. Kimaiyo retire early; two years in his term. He is a very honest, hardworking gentleman and a great citizen of this Republic. This is a man who has done

what has never been done in this nation. It is important that men and women of this country become patriotic enough to follow the example of Mr. Kimaiyo. Even where they were not directly responsible, they showed statesmanship and stepped aside or resigned because they believed that our country is bigger than any one of us. I am waiting for other persons to follow suit in the senior management of security so that our country can be safe.

I second this Bill very emotionally. I wish I had more time to say more things. Thank you.

(Question proposed)

Sen. (Prof.) Lesan: Thank you, Mr. Temporary Speaker, Sir. This is a very important Bill that has been moved and seconded. I believe that there are a lot of members who will want to contribute to it. However, to allow us to do it, we should schedule ourselves to have sufficient time to debate. Therefore, I rise under Standing Order No.99 and move that the Debate be adjourned on this Bill.

Sen. Wako seconded.

The Temporary Speaker (Sen. (Dr.) Machage): I have looked at Standing Order No.99 and will put the question.

*(Question, that the Debate be now adjourned,
put and agreed to)*

MOTION FOR ADJOURNMENT

ADJOURNMENT OF THE SENATE TO A DAY
OTHER THAN THE NEXT NORMAL
SITTING DAY

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

THAT, pursuant to Standing Order No.28 (3), the Senate do now adjourn until Tuesday, 10th February, 2015.

Unlike in the past; the days when Parliament used to exist and function at the whims of the Executive arm of Government, those of us who are in this Parliament, are fortunate because we are serving and we are in this Parliament at a time when Parliament has control over its own destiny.

Mr. Temporary Speaker, Sir, it is in this context that earlier on as we began the second Session, that this Senate did consider and approve the calendar for the second Session. That calendar states that today we are supposed to adjourn and resume on February 2nd, 2015. We are adjourning as a matter of course. At the outset, I want to take this opportunity to thank colleague Senators for very hard work during the past one year. We have passed 11 Bills. Hopefully, when those Bills are assented to, this year will go on record as a much more productive year in terms of legislation than the first year, 2013.

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Mr. Temporary Speaker, Sir, I want to take this opportunity to thank all those individual Members of this House who have brought Private Members' Bills and Committees that have done wonderful reports which they have translated into Bills. I want to appreciate all our Committees. The Committee on Education came up with the Early Childhood Education Bill, the Committee on Legal Affairs and Human Rights chaired by the indomitable Attorney-General *Emeritus*, Amos Wako, has brought numerous legislations, including the County Assemblies Service Boards Bill and others. Previous to this Motion, we have seen what the *ad hoc* Committee that our sister Sen. (Dr.) Zani was chairing was able to produce.

Mr. Temporary Speaker, Sir, this year has been very productive for us, especially on the legislative front. I say so, because it is not my intention to demean the value of the various Motions that we have passed. We have passed over 68 Motions. However, the impact of Motions passed here cannot be compared with the impact of legislation. Therefore, every time this House is able to process a Bill, we are impacting on the lives of Kenyans, especially in our counties because that is our focus.

I want to take this opportunity to thank even those who have sponsored Motions. Many of those Motions have actually generated legislative proposals. It is through the passing of Motions and the debates that ensue that we have been able to develop many of them into Bills.

I also want to thank the Senators, especially through the various Committees, again, for doing fantastic work at Committee level. I want to single out for mention the County Public Accounts and Investment Committee (CPAIC) which was put in place during the current Session. It has come out very strongly. It has attracted a lot of publicity and interest countrywide. I see no contradiction to say that actually the eyes of the Kenyan people are on the Senate, especially the audit and accountability work that is being spearheaded by the County Public Accounts and Investment Committee of this House.

Mr. Temporary Speaker, Sir, I have said it before that there is a lot of consensus countrywide when Senators talk about their mandate to protect counties and county governments. There is a lot of consensus and everyone is happy. But the moment, you touch Article 96(c) on oversight and accountability, you start seeing resistance which is expected. It is not surprising. Everybody will celebrate you when you are helping them achieve their mandate, but very few people are happy when you start asking questions of accountability. It is a difficult job, but I dare say that it is the most important job of this Senate. I say so, because as much as there is national consensus that we must ensure that counties get adequate resources, but more fundamentally is to ensure that every shilling that is devolved to counties is utilized to positively impact on the lives of the ordinary people. This is the difficult task that this Senate must carry without fear or favour and without ill will or affection.

I want to say; so far, so good. In my own estimation, 2015 will be even rougher because the kinds of reports we are getting in the audit reports that are coming are a clear indication that unless we stamp our authority and put our foot down, more resources will just be more resources to help one or two individuals and not to help the Kenyan public. I have heard critics ask why the Senate is so keen on accountability of money sent to

counties and yet it is not as critical with regard to the accountability of resources that go to national Government. The answer is simple. The Constitution has shared the roles of the accountability project among the two Houses of Parliament. For the National Assembly, their oversight is on the institutions and the agencies of the national Government. It is very clear that the accountability obligation of the Senate is targeted and directed at counties and county governments. So, we are just doing our job. We do not want to do other people's jobs because already what we are supposed to do is a lot.

I want to take this opportunity not only to thank the Committee, but also to thank every other Senator for whatever they have done about the issue of exercising oversight over counties. We must continue to exercise tough love. We know that counties need to be nurtured, supported and encouraged. However, we will not allow thieves or crooks to run away with money that is supposed to provide health services, drugs and farm inputs to our people.

Mr. Temporary Speaker, Sir, I also want to hurriedly say that I am happy with the work that has gone around the issue of bringing discipline in the executive at the county level. We have had a few impeachment cases which have not been very good experiences, but I think we have learnt enough lessons. I am happy that some of the challenges that---

The Temporary Speaker (Sen. (Dr.) Machage): Order. Your time is up! Can you move?

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

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

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I request Sen. Ongoro to second.

Sen. Ongoro: Mr. Temporary Speaker, Sir, I stand to second this Motion for Adjournment.

Mr. Temporary Speaker, Sir, the Mover has really deliberated on this exhaustively. Since the calendar of this Second Session was approved by this House, and nothing in the extreme has presented itself to force a change, it is in order that Senators get this much deserved break.

Secondly, I support this Motion because Senators also require time to enable them touch base with issues affecting their various county members. It is true that we adjourn the Sittings of the House every Thursday evening and most Senators travel on Friday and come back on Monday. That is not sufficient time for those who travel. It takes some Senators even two or three days for them to get to their counties. So, they do not get enough time to interrogate issues in their counties. Considering that some counties are quite vast – Nairobi County, for example, has 17 constituencies – two-days break is not sufficient for you to even know what is happening in all corners of the county. So, we deserve this break so that we can really have quality time with the constituents in those counties.

Mr. Temporary Speaker, Sir, it is also true that from time to time, legislators need to interact with the end users. We have passed quite a few pieces of legislation in this House. Therefore, it is only in order that we spend time with the end users; the

beneficiaries of our legislations, to evaluate the impact and consider amendments when we come back, if necessary.

Lastly, our primary responsibility is to oversight and to ensure the welfare of counties. You cannot defend or even ensure what you do not fully understand. So, Senators need adequate time to evaluate their counties' performance and engage with their respective county governments, the Members of the County Assemblies (MCAs) and even to spend time with the county executives, to consider the various pieces of legislation also that are being passed at the county level. This will enable every Senator to relate those pieces of legislation with what we pass in this House and know where the connection point is, so that when they come back they can defend what they fully understand. We have had to deal with various issues of misappropriation, complaints and even impeachment Motions. Every Senator in this House needs time to engage effectively with their MCAs so that they are able, when we come back, to legislate effectively, especially on matters that affect their counties.

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

(Question proposed)

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, as you know, this Motion gives you five minutes per individual to deliberate. It is also open-ended and I do not have to put the Question at the end of the Motion. It means, therefore, that we have exactly 35 minutes for us to discuss. It also means that seven Senators will have a chance to speak. But if we can make a saving, then all of us may be able to speak.

Sen. Murungi: Mr. Temporary Speaker, Sir, I rise to support this Motion. Essentially, we passed this Motion when we passed the calendar of the Senate sometime back. We are just confirming what we decided when we passed our calendar.

Mr. Temporary Speaker, Sir, we are going on recess when this country is burning. Insecurity is on the rise. The Senate has done the best that it could on the issue of containing the rising insecurity in the country. I am happy that the Senate approved a Motion that the Committee on National Security and Foreign Relations and the Committee on Legal Affairs and Human Rights jointly, during the recess, visit all the areas where there has been insecurity. They will hold hearings and bring a report to this House when we come back, so that we can find lasting solutions to the endemic insecurity in the country. Therefore, we are not going to sleep or rest. We will still be working even as we go on recess.

Mr. Temporary Speaker, Sir, in my own Committee, which our Senate Majority Leader did not mention by name; the Committee on Agriculture, Livestock and Fisheries, we have done tremendous work, which has brought a lot of glory to the Senate. Soon after we were appointed, we held a high level meeting in Naivasha that brought together the Cabinet Secretary, Professors and all the institutions of agriculture, to review the policies. It is at Naivasha where we identified food security as the top priority for our Committee for the next three years. We have been very embarrassed in this country; that every year, people cry about famine in Turkana, Baringo and Marsabit. The time for talking is over. It is now time for us to act and remove this shame from our country. We

shall need the support of the Senate even in the remaining years, so that we can achieve our dream of freedom from hunger in this country.

Mr. Temporary Speaker, Sir, the Committee has made high level study visits to China and India where we met Ministers for Agriculture and their staff. We also visited research institutions. We learnt valuable lessons on modernization of agriculture and support for farmers. That is why we are calling on the Government to take agriculture more seriously and go back to the 1960s when we had massive subsidies to the agricultural sector in this country and reject the misguided policies introduced by the World Bank and other Bretton Woods Institutions, which brought this country to shame from 1980s onwards.

Mr. Temporary Speaker, Sir, I do not have much time. As the Senator for Meru County, my primary responsibility is to represent Meru County on the Floor of this Senate. I won the ticket for Senate for Meru County on the motto of making Meru great. That is why you call me “the King of Meru.” I must say that I am very disappointed because we are unable to do the things that I thought we would do in the counties. This is largely because of insufficient allocation of resources. We have been allocated barely Kshs5 billion, out of which, Kshs3.1 billion goes to pay salaries. We have only Kshs1.9 billion left for development. I thought that we would have---

The Temporary Speaker (Sen. (Dr.) Machage): Order, when you see the yellow light, remember you only have one minute to go.

Sen. Wako: Mr. Temporary Speaker, Sir, thank you very much for giving me the opportunity to speak on this Motion of Adjournment. We are adjourning according to the calendar that this House has already approved. My happiness is that progress is being made. In the first year, we were only debating Motions. However, this year, we have begun delving into legislation. As you heard, we have already passed legislations. It is my hope that next year, we shall even pass more. We have now begun receiving Bills from the “Lower House” for debate and enactment. My hope is that in the course of next year, we should pass many more Bills. My hope also is that with current constructive dialogue that we have engaged with the judiciary and with the Parliamentary Service Commission (PSC), the number of issues pending concerning the welfare of Senators and our legislative work will now be looked into so that next year will be a good year.

Personally, I did not know that our representatives in the PSC were working very hard. I want to tell them to continue the good effort and work on the good environment which I believe was created this morning. I hope that next year, we will begin with a bang on the various issues we discussed.

We are going to adjourn, but committees will continue to work. My Committee will be having a retreat during this adjournment. The other day, we passed a very important Motion creating a joint committee to work on the issues of national security. That is a Motion that was brought to the Floor of the House by Sen. Billow. National security has become a major issue and we, as Parliamentarians, should be seen to be contributing positively to the creation of a country where there is security and peace.

I hope that this joint Committee will move with speed to undertake the functions that were given to it to investigate and come up with recommendations on the various shortcomings that may have been there. It should also make recommendations on how we

can improve, what legislation needs to be amended or be put in place and how we can streamline the entire process so that we have one commanding authority at the end of the process. As we go into recess, I would like that Committee to work expeditiously.

At another level, we represent counties. I hope we can take this opportunity to interact with our colleagues in the county. I am glad that in Busia County, for example, the leaders there including the governor, deputy governor, all Members of Parliament, irrespective of political parties, the leadership of the county assembly and the Senator of the area, we all work together under the county leaders consultative forum. I intend to use this recess to further bring together the various people to bring greater development to the County of Busia.

With those few remarks, I beg to support.

Sen. Lesuuda: Mr. Temporary Speaker, Sir, I also want to add my voice to this Motion of Adjournment. We are adjourning at a very sad time in this nation on the issues of insecurity. This is something that we have deliberated on in this House. This is something that is getting out of hand, but my contribution would be that as we break, we should continue with the same messages that unite Kenyans at this very difficult time. We should not be part of those who divide this country in any manner either on ethnic lines or religious lines. We, as leaders of this respectable House, will continue to offer solutions and preach peace.

For those of us who come from counties which have continued to experience this insecurity, we can use this time to go and talk to our young people so that they can see the purpose of peace and unity of this country. I know that a majority of us are committed and willing to preach peace. If we do not have peace, everything else that we have in this country is in vain. I believe that each one of us has a responsibility.

Regarding the issue of Committees, there is a lot of work that we will continue to do. There is much more to do in the Committees. For example, as Sen. Ndiema said, the farmers are asking where to take their produce because the silos are full and there is a lot of rainfall. There are also some parts of this country where people are still hungry. I do hope that as we adjourn, some of the issues touching on the lives of Kenyans will be addressed at the Committee level.

As Sen. Wako has said, there has been progress. During the first year, we were still trying to get our footing. However, that has changed and it can be seen with the number of Bills in the House.

(Sen. Mugo stood up in her place)

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Mugo, you have a point of order. What is it?

Sen. Mugo: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to contribute---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Are you on an intervention or a point of order. Can you press the other button so that I put you on the list?

Proceed, Sen. Lesuuda.

Sen. Lesuuda: Mr. Temporary Speaker, Sir, I was in the middle of saying that we have made progress as a House, looking at the number of Bills processed. Most importantly, we, as a House, have found a footing.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Mugo, you are still on the wrong button. Could you, please, press the right one? Save Sen. Lesuuda's time.

Sen. Lesuuda: Mr. Temporary Speaker, Sir, I know that this is an issue that we have talked about in this House. This is something that we can proudly say was fruitful. We discussed our various mandates so as to be on the same page with regard to the institutions we have created. Each of these institutions has a mandate and must be respected. Although we have been experiencing challenges as we try to implement the Constitution, it is important that we, as leaders of various institutions, talk to each other and not necessarily at each other. We have seen the fruits of that. We hope that as we come back to it, we will have a much smoother time as we continue with our work and our mandate as the Senate.

I would also like to thank the media for the support they have continued to give this House. We, as a Committee, need to see much more. As we go out to the counties to carry out our mandate, we hope that the media will go out of their way to highlight some of the issues that distinguished Senators will be doing at the county level during the break.

Finally, to add on what the Senate Majority Leader said, as we continue to discuss, the Committee on Devolved Government and the Committee on Finance, Budget and Commerce had a meeting to discuss sharing of revenue.

It is important for us, as a Senate, to continue to be vigilant on the management and use of these resources at the county level so that the aspirations of Kenyans who voted for this Constitution are achieved. One of the key things was devolution. We should continue to see to it that we keep our leaders accountable so that the lives of Kenyans are transformed.

Sen. Musila: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I join my colleagues in supporting the Motion. While the Senate Majority Leader was moving the Motion, he said that the Senate has done very well and has passed 11 Bills. My view is that we have not done very well. In today's Order Paper, we are leaving five Bills undone. I do not understand why we could not complete these Bills so that we say that we had dealt with 16 Bills instead of 11. I hope that when we come back, we will operate in a more efficient manner and pass more Bills. It is a shame to leave Bills pending which would have benefited Kenyans.

Having said, I want to applaud the leadership of the Senate. This week, we have made a lot of progress in networking with certain institutions such as the Judiciary, which we met on Monday and today, we have been consulting with the PSC. I want to confirm that the PSC is aware of the challenges facing the Senate in particular in terms of facilitation of Senators who have to cover big areas in form of their counties, but are not facilitated to move to those areas. Going by the discussions we had this morning with the PSC, Senators will see an improvement in the provision of facilities to allow them do their work more efficiently.

We are leaving for recess when this country is in pain. This country is suffering from insecurity and my colleagues have already talked about it. Many people are losing jobs, particularly in the tourism sector. Last week, I went to Mombasa, but could not believe what I saw. Hotels are vacant. Some have closed down and workers have been sent home. This will not be a short term thing. This will last for a long time and will have a negative effect on our economy. It is high time that all of us joined together in trying to tackle the insecurity that is prevailing in our country.

Sen. Lesuuda has talked about the unity of this nation which is very critical. Yesterday, there was an incident in my county where misguided elements in Mwingi closed the road so that people of North Eastern Province could not access the road. I want to assure people of North Eastern Province that that was not the leadership position. We have condemned that action in the strongest terms possible because Kenyans can work anywhere. Indeed, we have many people who come from areas outside North Eastern Province working in my county. While we condemn terrorism, we cannot attribute a community to it. We want to make this clear; that, everybody is welcome in Kitui County.

I am sorry to talk about something I have talked about in the last 17 years, infrastructure, in Kitui County. Thanks to the rains, we are going on recess, but many of us may not reach our homes. Infrastructure is in shambles. Roads and bridges have been destroyed and we may not access our homes. I appeal to the Government, as I have done in the past 17 years, to improve the infrastructure of Kitui County. Without that improvement, whatever we do, the economy and well being of the people of Kitui County cannot be guaranteed.

Finally, I want to wish all my colleague Senators and the people of Kitui County a joyous Christmas and a happy New Year.

Sen. G.G. Kariuki: Thank you, Mr. Temporary Speaker, Sir. We have very few minutes. However, I thank you for allowing me these few minutes. First of all, I would like to thank the Leadership of the Senate because we have come from far. We had many problems before we got where we are. The current discourse between the two Houses is very commendable. That guarantees continuity and harmony of the two Houses. That is the only way we can serve our people effectively.

Under the Constitution, the roles of the two Houses are well defined. I am very sure that the Senate is quite satisfied with what they have been given by the Constitution. I am sure that following that situation, we will go very far. Now that the dust has settled, there is no reason this House should not do more work than it has done. We have spent a lot of time, especially in the past two years, arguing among ourselves and asking who is bigger than the other. All this has been a waste of time. We are behaving as if we have not been in school to read the Constitution and understand it. Otherwise, we would not be talking the way we are.

Some people have talked about the security of this country. It is true that we are leaving when insecurity is a big problem. The biggest question you should ask yourself is: Whether we sit here or not, will the system change? Has the tradition of our security operators changed? Unless a few things are done, regardless of the past, going by the new age of security equipment and personnel, things will not change even if we stay here for a

whole year. The insecurity will still continue. We urge the Government – which seems to be taking action – to continue taking action which is visible, practicable and which is beneficial to the Kenyan people.

Firing people does not solve the problem. Personally, I want to appreciate the work that has been done by the former IG. That position is not a cup of tea. To deal with a corrupt system is, indeed, very challenging. The entire police system is corrupt and you are expected to perform better as if you are an angel. This cannot work. I hope that with the new development, changes will take place.

Mr. Temporary Speaker, Sir, I want to thank the Government for appointing some homeguards in Laikipia where we border Samburu, Isiolo and Baringo. All these areas have their own security. We appreciate that they have taken some steps to hire some homeguards for us.

Finally, I want to thank the staff of the Senate who have really worked hard. They have been very concerned about what the Senate does, particularly for the last two years. I like talking to every person and, therefore, I know what is going on. I appreciate their work. Through the Chair, I would like the Speaker to be informed that we are very grateful for what is happening now between the Senate and the “Lower House”.

Sen. Ong’era: Mr. Temporary Speaker, Sir, I rise to oppose this Motion. It saddens me that we would be talking about going for recess. Despite being alive to the fact that we have a calendar that we had all agreed to in the RBC, however, when we made this calendar which is almost a year ago, certain things have occurred in this country that necessitate us to stay a little bit longer before we can go for recess.

We had about 39 Bills that we needed to have dealt with. Out of these Bills, we have only been able to deal with 11 of them. Today you saw the undesirable manner in which we conducted Business. We did not even have enough Members to enable us pass the National Police Service (Amendment) Bill (Senate Bill No.29 of 2014). It forced one of our distinguished Senators to adjourn debate on two very important Bills that we needed to deal with and, here we are now rushing to go for recess.

It really saddens me that at a time when we are speaking about insecurity in this country, insecurity is so rampant. There are many incidents of banditry, terrorism, our women are being stripped left, right and centre, in the streets. We have not been able to resolve these issues. You noted that when we put a lot of pressure on the national Government, it is only the other day that we saw them making changes which I think were too little, too late.

Mr. Temporary Speaker, Sir, we have pending statements that we have raised, particularly about the welfare and the state of our maize farmers in the north Rift and other parts of this country. These statements have not been answered. As I speak, our farmers’ maize is actually outside granaries. Some is even rotting because of the heavy rains in the north Rift. This is simply because they are not able to take their maize to the National Cereals Board (NCPB). We are told that some “fat cats” imported a lot of maize from Uganda and stored it in at the NCPB. It is a pity that we are going on recess without having resolved some of these issues.

Even as we say that Senators, particularly the elected ones are going to their respective counties to do work, our Senators do not even have the County Development

Fund (CDF) that we were supposed to start getting after passage of a Bill in this House. Nominated Senators represent a huge constituency; that is, the national constituency. We expected that we would receive some of these development funds that would enable us to do the work that we were elected to do in representing the special interests of women, youth and persons with disabilities. There are many issues that I can raise in this House which would justify us not going on recess.

I oppose the Motion.

Sen. Mugo: Mr. Temporary Speaker, Sir, I understand the pain of the Senator who has just spoken, but I support the Motion.

Going by the way we have been working, I doubt whether even another week will make a difference. We need to change the way we are working in this Senate with regard to Bills and Motions. We must make sure that we do not spend so much time bickering, but doing the serious work we have been appointed to do.

Mr. Temporary Speaker, Sir, I thank the leadership of the Senate. We hope that we are gaining good experience as to the way forward. I hope we will be able to do much more work in the coming years. Recess is a time to take stock as well, evaluate what we have done and what is ahead of us.

The Temporary Speaker (Sen. (Dr.) Machage): I can see that there are only two Members who want to speak to this Motion. Therefore, I will use my powers and invoke Standing Order No.30 to extend time to allow you to contribute.

Proceed, Senator.

Sen. Mugo: Mr. Temporary Speaker, Sir, I want to urge leaders to tame our utterances when we go out there. We are crying about insecurity in the country whereas some of us are responsible for fueling insecurity in this country. If we continue to talk the way we have been talking at each other and showing disunity as if there is a crisis in the country, I believe they will also react differently. I urge my colleagues and the other leaders to act maturely knowing that our youngsters and other people who are disgruntled are watching us.

I would also like to add my voice to the concerns about insecurity in this country. I would like to reiterate that whereas the Government is fully in charge and responsible for security, we, as citizens, also have a stake and a role to play in ensuring security in this country. It is unfortunate that when the President said that, some people wanted to turn it around and claim that he absolved the Government from responsibility. From what I understand; whereas the Government has the bulk of responsibility, every citizen also has some responsibility. Some of these people perpetuating insecurity live with us. Others cross the border and come here to cause insecurity. I am sure there are citizens who know them and yet they do not report. Unless we cooperate with the security agencies, we will not deal effectively with insecurity in this country.

Mr. Temporary Speaker, Sir, I want to urge the Select Committee that is looking into the cause of insecurity that they should also see whether there is a hidden hand somewhere. It is impossible to think that all this goes on and nobody here is involved in helping those people in one way or another. That will ensure that everybody is really concerned about insecurity and doing their part.

Having said that, I think that we also carry the security of this country in our hands. I would like to join my colleague in thanking the Inspector General for taking the courage to resign. We know that he was interviewed---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Your time is up!

Sen. Mugo: Mr. Temporary Speaker, Sir, I beg to support.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Speaker, Sir. I support this Motion.

I would like to start by saying that this Senate has really grown from strength to strength, from the time we began. We need to remember that we are a new House in a new bicameral system as stipulated in the Constitution of Kenya, 2010. I think that we have put our best foot forward and worked hard. We have also found ways of getting our work better done.

As has been alluded to, we have passed 11 Bills. We could have had more, but we can sit back, as we begin the Third Session, and find mechanisms to fast-track even the way we process Bills and discuss them. We have a lot of business in this House and want to transact it in such a way that by the time we finish the Fifth Session, we will have really surpassed the Bills that we would have wanted to bring to this House. In the Committee on Education where I sit, we brought two very crucial Bills to the House; the Early Childhood Development Bill and the Universities (Amendment) Bill which will really streamline the education sector in this country. I am sure that across all the Committees a lot of vibrancy has really taken off. I remember when we began, we, as the Senate, had a session where we met the Commission on Revenue Allocation (CRA). But this time we have been able to do it within the various Committees. The various Committees have really grown and the dynamism within them will actually enable us to get our agenda going.

There was a reason people voted for devolution and a bicameral system. Therefore, it is very important that we, as the Senate, contextualize our roles in terms of being the guardian angel of the counties. The work that we need to do in this Senate must be done. We have spoken about accountability which is very critical. As much as we fight for more resources, as long as we do not get a culture in this country; that we must be accountable for what has been given to us--- In fact, I do not even think that any state organ needs to follow another one and request for accountability from that state organ. We need to move to a point where we actually come forth with the figures, calculations and expenditure and put them up for everybody to see. This is because we really must ensure that devolution has worked by the end of five years. People within the communities must feel that social economic development has come their way. We would appreciate at that point if they will attribute it to the Senate.

Mr. Temporary Speaker, Sir, now that a more cordial working relationship with the National Assembly is developing, I think it will be very quick for us to dispense of our agendas. The process of allocating Bills and determining whether or not they concern counties needs to be streamlined, so that we can have quick concurrence between the two Speakers. We are moving to a point where we also anticipate more Bills to come to this House from the National Assembly, even as we produce our own Bills within the context of the Senate. We are up to the task and we are looking forward to it as we take a rest so that we come back more re-energized and energetic.

With those few remarks, I support.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I will not take a lot of time. I will take a few minutes to support the Motion for Adjournment Motion. First, I take the opportunity to thank the leadership of the House; the Speaker's Panel, the Senate Majority Leader, the Senate Minority Leader and all the Members of the Senate who have participated in the deliberations of this House.

Mr. Temporary Speaker, Sir, we know our responsibilities of oversight over the counties. We are aware that there are some constitutional bodies that should help us to oversight. These are: The Office of the Auditor-General, the Ethics and Anti Corruption Commission (EACC), the Criminal Investigation Department (CID) and others. We demand a lot from these bodies, but we also need to support them so that they can support us. We know that the Office of the Auditor-General has just about 100 personnel who were previously serving one Government, but now, they are serving the 47 county governments, including the national Government. It is very clear from this that they are definitely over-stretched and they are, probably, not helping us much. This is shown by the fact that the Auditor-General's reports reach us very late. In fact, in most cases, it is the case of closing the barn when the horse has already bolted. Right now, under our noses, we are now watching as resources that we devolved to the counties, being wasted by some of the busy bodies in the counties.

Mr. Temporary Speaker, Sir, we need to support these bodies in our next dispensation as we deliberate on issues within the Senate so that we can truly be representative, supervise and oversight the counties that we represent.

Mr. Temporary Speaker, Sir, during this session when we have been in the House, we have witnessed the greatest number of our own Kenyans lose lives, not as a result of diseases but as a result of violence in our country. This is very worrisome. It is important that we look at that issue. When you listen to Kenyans talking nowadays, everyone of them knows what should be done in order to sort out the security problem. However, this is not being done. Therefore, we ask the Government to evolve new tactics at every turn to tackle the insecurity problem that is threatening each one of us. We listen and we have heard individuals say, you must take care of your own security. Of course, this is a very true statement; that it is upon us as citizens to be careful and take some part in our own security. However, we expect that our Government offers us the maximum security that we require to make progress in this country.

Mr. Temporary Speaker, Sir, in this country, we are also being threatened with another form of insecurity. This is food insecurity. Although we have areas in our country where there is plentiful supply of food, but it is the way we manage it that can guarantee us food security or otherwise. Probably we are going to lose more lives in this country in the middle of plenty because of the way we manage and move food resources within our country. Therefore, I hope that in time, we are going to be very careful about the surplus food that is in our country so that, not only shall we consume it, but also get resources out of them and use them appropriately.

Mr. Temporary Speaker, Sir, the health of Senators and all Members of Parliament is very important. It may look child-like to go to the gym, but it is not childish. I would like to request that Senators use the gym. I am sure there is no

adjournment of gym facilities in Parliament. There are also gym facilities throughout the country. It is very important to overcome lifestyle challenges that are threatening our lives at the moment. Therefore, I want to urge Senators as they go out on recess, to visit the gym and do the child-like activities which are not childish, that is, to use the gym facilities to stay healthy.

I wish my colleague Senators happy Christmas as we operate within those who elected us and hope that we will be back here in a whole complete number that has been in the House in the next sitting.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Orengo, you came above time. However, I will use my discretion to allow you to speak.

Sen. Orengo: Thank you very much, Mr. Temporary Speaker, Sir. I was caught up in traffic jam. I should have been here more than an hour earlier, but I appreciate the exercise of your discretion for you to allow me to have the last word on this Motion

The Temporary Speaker (Sen. (Dr.) Machage): Order! I will have the last word on this Motion.

Sen. Orengo: Mr. Temporary Speaker Sir, I am talking the last word on the Floor of the House. From the seat of the Speaker, you will definitely have the last word. I had anticipated that this Motion was coming. It is my strong belief that there is a lot that is happening in the country that requires the presence of both the National Assembly and the Senate to be in session until the country overcomes the difficult situation we are in.

I have never heard of a situation where a President of a country says that the country is under attack and that it is at war after which legislators choose to go on recess. That utterance by the President, that the country is at war, quickly calls into question the constitutional responsibility of the National Assembly and the Senate. It is in the Constitution that when it comes to deployment of the military internally, that is in the domain of the National Assembly. However, where the Government requires additional troops to go outside in defence of the country, the role of the Senate becomes critical. For that very important reason alone, I feel rather embarrassed that at this critical time, this Senate is going on recess.

Be that as it may, upon reflection and when we are down in the county, some of us will have to explain why we decided to come. If the country feels that it is appropriate for the Senate to be away, so be it. As we contemplate what is happening in the country at the moment, it is critical that the law is applied as it is. In fact, whereas the President received a report from a group of professionals and technocrats on the situation of security in the country, there is already existing legislation. I was impressed by the late Minister for Provincial Administration and National Security, Prof. George Saitoti.

The Police Service Act was being discussed in the Cabinet subcommittee requiring the Governor to play a role in the security operations of the National Police Service at the County level. That legislation requires that the Governor sits on and chairs the county security authority. I do not remember the name precisely. That legislation is in place and yet the security organs have refused to implement that legislation. We heard the Governor of Mandera crying to the national Government to provide security to that county. Obviously, it appears that in the last one month, the Governor seems to have had

a lot of information to do with what is happening in Mandera. I plead that as the Government thinks through on what to do, what mechanisms and legislation to use or bring about, to apply the law as it is presently to enable Governors play their rightful role in security.

The last word is that in any operation involving the armed forces, particularly the army, you must have a strategy for any kind of operation. You must have a mission and state clearly what your mission is.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Members, it is now time to adjourn. However, before I make the pronouncement on adjournment, I would like to make the following statement.

I wish all the Members of this House a happy Christmas and a prosperous New Year. I also wish to state that the Senate is not dissolved. The Senate may be called upon at any time, be it tomorrow, the day after tomorrow, next week or after the recess is over. So, be ready. If need arises, this Chair will use the powers bestowed upon it by you.

The Senate is, therefore, adjourned until Tuesday, 10th February, 2015 at 2.30 p.m.

The Senate rose at 6.45 p.m.