

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 22<sup>nd</sup> May, 2013

*The Senate met at the Kenyatta International  
Conference Centre at 2.30 p.m.*

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

### PRAYERS

#### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Speaker** (Hon. Ethuro): Hon. Senators, could we confirm if we have a quorum?

**The Clerk of the Senate** (Mr. Nyegenye): Mr. Speaker, Sir, we have 20 hon. Senators present in the Senate. We have a quorum

**The Speaker** (Hon. Ethuro): Let us proceed.

### COMMUNICATION FROM THE CHAIR

#### INVITATION OF HON. SENATORS TO THE NATIONAL PRAYER BREAKFAST MEETING

**The Speaker** (Hon. Ethuro): Hon, Senators, I have a communication on the subject of the National Prayer Breakfast.

Hon. Senators, as you may be aware, Parliament, through the Parliamentary Prayer Group, has been hosting an annual National Prayer Breakfast. This year's National Prayer Breakfast is scheduled to take place on Thursday, 20<sup>th</sup> June, 2013, at the Safari Park Hotel beginning at 8.00 a.m. His Excellency the President, hon. Uhuru Kenyatta, C.G.H., is expected to be the guest speaker. This is a function for all Senators, Members of the National Assembly, the private and public service sectors, governors and county assembly speakers. The event is funded by hon. Members through voluntary contributions. I, therefore, appeal to those willing to make their contributions to do so by signing their names on forms to be made available in due course.

In addition, hon. Senators who may wish to join the inter-denominational Parliamentary Prayer Group are invited to attend the group's weekly prayer meetings held every Wednesday, beginning at 7.00 a.m. in the Committee Room on the Second

Floor of Continental House. For further information on the prayer breakfast and the weekly prayer meetings, hon. Senators are kindly asked to contact Sen. David Musila.

Thank you.

Next Order.

## COMMITTEE OF THE WHOLE

### DIVISION OF REVENUE BILL

**The Speaker** (Hon. Ethuro): Hon. Senators, we will skip Order No.8, Committee of the Whole scheduled for today. It will appear on the Order Paper tomorrow afternoon because the Committee is still working on some proposals.

Maybe just to take advantage of the opportunity, hon. Senators, tomorrow in the Committee of the Whole, we will be having the Division of Revenue Bill. You will be voting as delegations, and you know the importance of that. It is important that all the delegations are present or, in their absence, written permission by the head of delegation is required.

*(Committee of the Whole deferred)*

Next Order.

## MOTION

### ENACTMENT OF LAW TO REQUIRE PAYMENT OF ROYALTIES BY INVESTORS TO COUNTIES

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. I beg to move the following Motion:-

THAT, aware that various counties in Kenya are endowed with natural resources such as oil deposits, wildlife, minerals among others; appreciating that their capability to exploit and utilize the resources varies according to economic and technical potential; cognizant of the fact that under the devolved system of government, the county's role in the creation of national revenue is critical; concerned that there may be no direct and proportional share on the basis of the revenue that a county is able to generate since equitable sharing of revenue raised will be done by the national government; affirming the need for direct benefit from the proceeds of the said natural resources to the local communities, especially in marginalized counties; aware that imposition of tax by national or county government can only be by way of legislation and that only the national government can impose tax; the Senate urges the government to take immediate steps to initiate legislation, pursuant to Article 209 (2) of the Constitution, to require investors to pay at least 20 per cent of their

turnover as royalties to the respective counties where they operate so as to enable resources of specific counties to be directly utilized in the counties to address specific social needs and, thereby, act as an incentive for the said counties to optimize their capacity to raise revenue.

Mr. Speaker, Sir, it is a well known fact that Kenya, across all the counties, even in terms of regions, is well endowed with natural resources. For the sake of this Motion, when we are talking about natural resources, we are actually referring to all the natural resources, not just focusing, for example, on minerals. We are thinking about all possible natural resources such as wildlife, water, oil, *et cetera*. There is a lot of underground water in Turkana. If this water can be maximally used, there will be enough water in this country. Just cutting across the various counties, we find that, for example, there is a lot of titanium in Kwale, Malindi and Lamu. There is a lot of soda ash in Lake Magadi, fluorspar in Kerio Valley, iron ore in Taita, Meru, Kitui and Kilifi. It is possible to really generate a lot of revenue from these natural resources.

From data that has been computed and put forward by the Mineral and Geology Department over a period of just one year, from 2009 to 2010, there was an increase in terms of revenues that was collected from natural resources of about Kshs14.8 billion. This was an increment from Kshs.9.4 billion. We can raise a lot of revenue for this country if we were to fully exploit natural resources. However, at the county level, there has not been enough effort to exploit those resources as much as possible. Most of this income has been in the form of licenses, for example, such as prospecting licenses in the mining industries and other licenses that investors are expected to pay for. But in terms of the actual natural resource exploitation, some counties have done better than other counties. Of course, it is very clear that the creation of national revenue is very, very critical for our country. That national revenue is raised at various levels and if I turn to the Constitution, the allocation and the ways that revenue can be collected is stipulated in Article 209, which is about power to impose taxes and charges that can be imposed at two levels. It states:-

“(1) Only the national government may impose —  
(a) income tax;  
(b) value-added tax;  
(c) customs duties and other duties on import and export goods; and  
(d) excise tax.”

(3) A county may impose—  
(a) property rates;  
(b) entertainment taxes; and  
(c) any other tax that it is authorised to impose by an Act of Parliament.”

Mr. Speaker, Sir, from these taxes the Government is able to collect, it is possible for them to exploit the natural resources. As much as we can tap these natural resources at the level of collecting revenue, this has not been the case. Therefore, the gap is still there.

So, apart from the sources of collecting revenue, there is also the issue of how that revenue collected will be shared out. I think we have spent a lot of time for the last one week talking about revenue allocation across the various counties and how that has been

actualized. According to Article 202, the revenue raised nationally has to be shared equally. The Commission for Revenue Authority (CRA) has actually given various proportions of the way that allocation can be made. For example, that not less than 15 per cent should go to the counties, and at least 85 per cent, should be shared at the national Government. That “not less than 15 per cent” suggests that it can be more. In the last allocation, for example, that went up to about 33 per cent of revenue. This allocation will be channeled to the county governments. That left about 67.5 per cent to the national Government and about 0.5 per cent to the Equalisation Fund.

Now, as much as that revenue is generated and shared at one point from a common pot, there are certain counties, for example, which have been able to exploit their natural resources more than others. Therefore, they would expect higher levels of compensation. There are other counties that have not had a chance to exploit those resources. There is a possibility that they might not even have those resources to begin with. We agreed that we cannot have those counties that are not able to raise such national revenue through their resources being kept aside. This is because that will result in skewed development in the country. The provision that has been given under Article 202 is a constitutional provision over which we cannot really do much to change, but we can cast our lens and move towards the argument of looking at the counties and what they are able to generate.

Mr. Speaker, Sir, this morning, we have been talking about counties and the possibilities of them generating more income. For example, it is very clear that the budgetary allocations that have been given at county level are not going to be sufficient for the development agenda of those particular counties. Those counties need to look backward and identify what they have within them and how they can actually use the provisions that are God-given to make a change.

The approach of consolidating resources nationally and then sharing is also a practice in Nigeria, South Africa and Indonesia. This is agreeable and, to a large extent, it enhances unity among the various counties. In fact, it helps to hold them together. But there could be simmering issues and also a notion that there is much more that can be done by the counties to actually enhance their resources. The Equalisation Fund under Article 204(1) tries to address the discrepancies that might be there and targets the marginalized specific counties. According to the CRA, these are the 14 counties that have already been identified.

Mr. Speaker, Sir, this figure is very low. Even with the equal share that tries to raise the revenue allocation per county, it is not enough. It is still true that in many counties, especially marginalized counties, the level of revenue received is very low. With county allocations from revenue and the allocation from the Equalisation Fund, there is still a big gap that has to be addressed at the county level. Therefore, the next step is really to begin to interrogate how best to actualize and think about how counties can generate their own revenues. Counties need to think of how they can begin to tap into their various natural resources so that they can make a difference.

In the process of exploitation these natural resources, a county may end up losing part of its land through forcible acquisition. It might be that there will be environmental degradation. Sometimes natural resources have been a big source of conflict at various

levels within the county. Even with the county trying to think about how to really use the natural resources, there is the hiccup as they look back and see what it really entails. Therefore, there is a feeling from the counties that, at the end of the day, they should be able to gain from the natural resources within their counties which are God-given. Sometimes these natural resources are also seen as being part of a heritage for a particular county. They are holding it for the future generations. Therefore, even as they give that land to be used or even as they give their mines to be exploited, there is need to make sure that that county benefits from their natural resources. That will, in turn, also help to have faster rate of development depending on how the revenue that is allocated is going to be used at the county level. So, there is that feeling that there is un-proportional formula in terms of what a county ends up with and also the feeling that some counties do not produce as much as other counties. At the end of the day, they still have to be given as much. This means that we must propel counties to begin to think about the natural resources that they have and how to exploit them. We do not want a sort of a socialist notion where, at the end of the day, it does not matter what you bring into the pot, but you will get your fixed revenue. As an impetus, therefore, the idea is to come up with incentives that will help counties to think about how they can begin to exploit their natural resources to their advantage. The proposal is that at least 20 per cent of collected revenue from extraction of natural resources is ploughed back directly into the county.

Certain systems, for example, in Indonesia, have about 15 per cent of oil extracts and 30 per cent of gas extracts being collected nationally. But when the division is done in terms of revenue, their proportional contribution is taken into consideration. Therefore, they end up getting more than others who did not contribute as much. That gives a feeling of direct contribution.

Another proposal is to have that 20 per cent in royalties. Royalties are based on direct production rather than profits so as to ensure that a county is able to reap directly from its natural resources. If that is left on the investors to decide, we will have some investors who will come on the fore and say that they have made losses. Therefore, the county is not able to gain any revenue from what has been really extracted. But through legislation, we can make such legislation so that royalty is given directly to the county.

The notion of the importance of a county and the notion of the importance of the community are enshrined again in Article 174(d) of the Constitution that recognizes the right of communities to manage their affairs, so that, in turn, can further their development. Article 174(f) is about promotion of social and economic development. This is expected to take place at the county level. Article 209(2) says that:-

“(2) An Act of Parliament may authorise the national government to impose any other tax or duty, except a tax specified in clause (3) (a) or (b).”

This refers to a tax or duty that is going to be directly beneficial to a particular county. Therefore, royalties, in that sense, will help to push the counties forward.

What do the counties do then with this revenue that has been collected in the form of royalties for that particular county? Vision 2030 has made an analysis of the various counties and actually already set priorities for them. One county might want to say “my agenda is education,” another county’s agenda might be health while another county’s agenda might be infrastructure. The proposal is to have a revenue fund, but also have a

board that actually gives direction about specifically how the money that has come into a county as a result of royalties is used after consultation with various counties. People in a county want really to feel that their minerals have been exploited, if they can be paid royalties. They will say yes we have suffered from environmental pollution, but we are able to ensure that all our children can go to school. we can make sure that, for example, we have a fund where bright students can get scholarships to enable them pursue university studies. Our youth, for example, will go through technical education. Our mothers and children have sufficient health care. They have recourse to that because it is tied directly to the royalties that they receive. This is so that in exchange even for the royalty that they get, they know that, yes, we suffered negative consequences, but at the end of the day, we can actually see a direct link and a direct beneficiary component.

Various proposals have been given at the level of sharing of royalties at the county level. For example, 80 per cent goes to the national Government, 15 per cent to the county government and 5 per cent to the community. Such a proposal still encompasses the 20 per cent royalty that we propose in this Motion. We propose 75 per cent for the national Government, 15 per cent for county governments and 10 per cent for community, respectfully. This is something that stakeholders have already been thinking about. It is only that the conceptualization that has been made so far has only been made along a particular natural resource. For example, according to the Mines and Minerals Bill of 2011 and the Geology Minerals and Mining Bill of 2012, they had these proposals after consultation with stakeholders. However, their focus is only on mining and minerals to the detriment of all the other natural resources which are very important. I think the key thing will be how to manage this. The provisions for management of such county revenue funds have already been given under Article 207(1), 2(a), 2(b), 3 and 4.

So, there is a possibility that, that fund can be managed stringently so that it is actually apportioned to the agreed county focus and expenditure because the amount that goes to the community has also been agreed on. The community can be defined in different ways, either the immediate community that suffers most from this extraction. It can also mean the community in general. We can have a foundation, for example, that targets and ensures that a specific component is taken into consideration. Of course, the discussion over time and in the future could be about how to vary this proportion of royalties as the natural resource is being extracted and used. As that increases, these proportions do not need to be static and they can change over time.

So, as much as there might be very little that we might do with the county allocations that have already been given and constitutionally adopted, we might be able to have innovative ways of making sure that counties are able to come out of the quagmire that some of them are in because of diminished financial resources. As I said earlier, there is lot of legislation in place, but there is a fragmented way in which natural resources have been handled in terms of processing. So, we have legislation, for example, the Petroleum Act; we have legislation on wildlife, we have legislation separately on forests. We have legislation separately on minerals. We have legislation separately on community land and how that community land can be optimally utilized. But in all these, what is missing is a county focus. I think this Motion, more than ever before, is so appropriate as we devolve to the counties and find ways of ensuring that counties

devolvement works, and works overtime. If we have a way of using such resources, then that will be possible in the long run. So, rather than focusing on only one sector, it is important to focus on all the other sectors. We have talked about our disappointments and sometimes the schemes to stifle devolution. Those schemes seem to be more alive now than ever before. As a way out, if counties are able to focus on their natural resources and we come up with legislation where investors can pay 20 per cent of royalties to those counties for specific aspects of development, then counties will move forward.

Mr. Deputy Speaker, Sir, with those remarks I beg to move and request Sen. Hassan Ali to second this Motion.

**Sen. Abdirahman:** Thank you, Mr. Deputy Speaker, Sir. I stand to second this Motion by Sen. (Dr.) Zani regarding a very important sector, that of natural resources in Kenya. Our country is endowed with great potential in natural resources. If we, as a country, really get to understand how much we can benefit from our natural resources, really this will not only improve our livelihoods, but also greatly, as it has done in the past, contribute to our economic performance. Many a time we have had investors coming to our country, negotiations are done at national level, but controversies rage in counties. I am sure last year many of us noted what happened in Kwale County over the issue of mining. This was because there are no clear positions in terms of what communities are expected to benefit from such resources. More importantly, under the new constitutional dispensation, where we have gone into devolved government units, we need to be very clear on how best our counties are expected to benefit. Some of our counties are not able to generate sufficient income locally. The fact that such a Motion comes in to force, from which we expect the relevant line Ministries to pick up appropriate policies or legislations, then we will be in a better position to locally finance some of our development programmes.

Mr. Deputy Speaker, Sir, many a times a number of investors who set up companies around say that under the Corporate Social Responsibility (CSR), they will support community initiatives. We have witnessed that let alone taking up a little on their shoulders, they have evaded community responsibilities. At their expense, we continue to suffer so much environmental damages. Passing such a Motion will be able to help us out of some of these issues.

Let me talk about two issues on minerals and petroleum. I will pick the cement industry as an example. Besides the East African Portland Cement (EAPC) where the Government of Kenyans has about 52 per cent shareholding, all other companies such as Athi River Mining Limited (ARML) and Mombasa Cement Limited (MCL) are purely owned by private investors. What they contribute to counties or individual communities does not make a difference. If you look at the issue of wildlife conservation, private conservancies have come up. However, there are no clear guidelines on how best they should reciprocate their earnings in terms of supporting communities. It is indicative that we have clear gaps in terms of finding out how much they should contribute. But it is imperative that, we, as a country, ask these investors to pay royalties. Whichever way we manage, I am sure the relevant Ministries can be guided. But we must agree on a common approach that we ask them to pay royalties, including the latest discovery of oil in Northern Turkana, one of the disadvantaged regions. We know the latest International

Monetary Fund (IMF) report says that in six to seven years from now, Kenya will be joining heavy weights within the region in terms of oil production. This will only be possible if we provide guidance at the onset when we are trying to set up institutional structures at the local level. We should have a new approach in terms of building up our economic capacities because we do not have to look at what comes from the national level. But we must agree, particularly for the marginalized counties that cannot raise anything beyond property taxes, this is the right way to go.

Mr. Deputy Speaker, Sir, I support this Motion. I pray that other hon. Senators will follow suit and ensure that we guide our country towards a better economic path.

Thank you, I beg to second.

*(Question proposed)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I know that I am not supposed to give my views as I sit here, but I dare say that sometimes the hon. Speaker is disadvantaged because I also come from a County and I will not be able to debate this very important Motion. We have three hours to debate the Motion. I wish that the Motion had also included water as a natural resource, so that those counties that are offering this facility to Nairobi and other cities are able to collect taxes and royalties for that purpose.

**An Hon. Senator:** You are out of order!

**The Deputy Speaker** (Sen. Kembi-Gitura): Well, you cannot tell me am out of order. You are completely out of order!

*(Laughter)*

So, hon. Senators, the Floor is now open for debate.

Sen. Kajwang proceed.

**Sen. Kajwang:** Thank you, Mr. Deputy Speaker, Sir. First, I want to thank Sen. (Dr.) Zani for this timely Motion. I do not know her background. But it seems like she has a background in mining. The Motion is quite lengthy and convoluted, sometimes complex, but she has captured what we have been watching in every county

Mr. Deputy Speakers, counties are now owners of trust land. The trust land that is in Homa Bay County, for example, now belongs to the Homa Bay County Government. In that trust land, maybe, is the area in which some gold may be found. In the neighbouring Migori County, for example, there is a lot of gold. Am not so sure what is in Homa Bay County yet, but from what I hear, there is a lot of potential in geo-thermal energy and cement manufacture. Counties are already looking at their natural resources and saying: "This is our wealth." It is important that we do not cheat each other. The national Government, of course, has been given the power that anything below the soil belongs to them, especially if it is oil or coal. But let us not forget that the areas where this is found is in the counties. Every county feels, and justifiably so, that this is their resources. If this issue is not addressed as early as we are trying to address it, it may very well bring conflict. Such an issue has brought conflict in Nigeria in the Ogoni State. They tried to take the army there and they were defeated until the national Government agreed

to share the revenue with the communities who believed they were the owners of the resources and who were also suffering from environmental degradation that came with it. There is now some semblance of peace. In order that we deal with this early, I know that Sen. Musila is closely watching a lot of coal in his county. Another county is looking at iron ore. Kenya is likely to be one of the producers of steel from our resource. But if you went there and gave that resource to some Chinese company, as was proposed earlier by the national Government in Kitui, and then the Chinese Government just extracts the coal and takes it to China to manufacture steel, and residents of the County of Kitui just watch as this is going on, I can tell you that within one year of that extraction there will be conflict. There is no need of trying to talk as if we cannot see this coming.

Mr. Deputy Speaker, Sir, I have listened very carefully to my sister, Sen. (Dr.) Zani. She has mentioned that it could be either way, at 75 per cent to 15 per cent or something like that. It is very difficult to define a community. The closest community, which means the closest village, will then say that they are entitled to ten per cent or whatever it is. Sometimes this can bring in more conflict. Now that we have accepted, as a fact, that we have Government at the county level, we could as well devolve it up to there. We could say the county governments will be entitled to a certain amount of revenue from the royalties and revenues. I do not know how this will be worked out. But it is important, as a principle to agree.

Mr. Deputy Speaker, Sir, I want to urge the Mover of this Motion to talk very closely to Hon. Mwakwere because until recently he was the Minister in charge of the mining docket. He had very good ideas on what to do with Kenya in terms of mining. He believes that, in fact, other than oil, which I am sure my brother from Turkana County will talk about, that we can be a very rich country if we extracted our resources and made the revenue available to ourselves. The problem we have right now is that most people come here as prospectus. With the prospectus licence of some given kilometres square, they extract a lot of gold, minerals and other stones which are very valuable, they do this for years because they are "prospecting". There is no revenue that the Government collects from them. Other than the prospecting license which is Kshs20,000, they can prospect for 20 years. I know some of them who have earmarked certain vast land in Migori County, for example, where they have been prospecting gold for the last 30 years on large tracts of land. The Government does not get any revenue. The county government does not know what they do. We must start afresh and make laws which county governments will use to make sure that we get what is ours. The sharing of it must also be helpful.

Mr. Deputy Speaker, Sir, I do not want to talk for long. But as the Chair said, water is a resource. Wind, currents in the ocean and forests are all forms of resources that we can talk about. But I am sure my sister was referring to minerals that ordinarily the Constitution already gives to the national Government. But we hope that the national Government, while extracting and taking these royalties, will apportion that royalty to the governments that we have created at the local level, so that we can benefit from what is ours.

Mr. Deputy Speaker, Sir, I support the Motion. May God bless Sen. (Dr.) Zani for bringing this Motion.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Machage.

**Sen. (Dr.) Machage:** Asante, Bw. Naibu Spika, kwa kunipa nafasi hii. Hoja hii ambayo imependekezwa siku ya leo na Sen. (Dr.) Zani ni ya manufaa makuu kwa nchi yetu. Tuna bahati kwamba katika utawala wa mkoloni mzungu hakuweza kuyaondoa madini yote kutoka Kenya. Tunashukuru Mwenyezi Mungu kwa jambo hili. Nchi nyingi za Bara la Afrika ziliporwa na wakoloni. Nchi yetu bado iko na rasilimali ya kila aina ardhini. Pia tuna rasilimali ya udongo mwema ambao hutumika na kampuni kubwa ambazo zinajihusisha na ukuzaji wa mimea kama vile tumbaku, miwa, mpunga na kadhalika. Hivi karibuni tumeona kwamba kuna wawekezaji wengine ambao ni wadanganyifu sana; mabepari ambao hawana shukrani. Wanachukua kila kitu ambacho wamekipata na kupeleka kwao. Mifano mingi ipo. Kwa mfano, ukuzaji wa tumbaku katika Mkoa Nyanza na hasa Kaunti ya Migori. Tumepata kampuni ambazo zinageuza majina kila baada ya miaka mitatu. Kampuni imeitwa British American Tobacco (BAT), baadaye Alliance One, na kadhalika kusudi wasilipe ushuru kwa Serikali. Tuna wawekezaji wengine kama Master Mind Tobacco (MMT) ambo huja na kudanganya watu na kuchukua mali na kuenda kuuza mahali peningine bila kurudisha mkono kwa wale ambo wamekuza zao hili wala hata kusaidia kujenga shule au zahanati.

Bw. Naibu Spika, sheria kama hii ikiundwa, kwamba lazima asilimia kiasi fulani itengewe serikali za mashinani, ni vizuri sana. Sen. (Dr.) Zani amependekeza asilimia 20, itakuwa jambo bora, la heri na hekima kwamba tupate hizi pesa zikirudishwa mashinani kukuza uchumi wa sehemu hizo ili kuwe na shule, zahanati na viwanja vya michezo vizuri na pia kuwe na miradi mingi ya kuwasaidia akina mama.

Bw. Naibu Spika, katika Kaunti ya Migori tumebahatika kuwa na dhahabu nyingi. Sen. Kajwang amesema tumepata wezi waliojificha kwenye mipango ambayo haiyeleweki. Wawekezaji wengine wanapata leseni kwamba wanakuja kuchunguza kilicho ndani na kuanza kuchukua mali hiyo miaka nenda, miaka rudi, bila kulipa ushuru kwa Serikali. Wanafanya hivyo kwa sababu ya rushwa. Hawa ni watu katika Serikali ambao wanahongwa ili wasiangaze macho na kuona uovu unaoendelezwa na watu hawa. Hawa ni wanafiki wanaohujumu uchumi wetu. Hili liwe jambo la kusahaulika kabisa kwa sababu miaka mingi imepita ambapo wananchi wameibiwa na wawekezaji. Wawekezaji hawa wamekuja nchini wakijifanya wamekuja kuchunguza na wanachukua mali na kupotea nayo. Hatutakubali jambo kama hili tena. Serikali za mashinani zinafaa ziwe angalifu sana. Ni lazima tuangaze sheria zote ambazo zimeandaliwa ili tuhakikishe kwamba rasilimali yote ambayo imeondolewa mahali fulani, jamii husika zimepata kiwango kidogo cha uchumi kusudi wakuze maslahi yao.

Bw. Naibu Spika, hii ni sheria ambayo sidhani kama kuna Seneta ambaye ataipinga ingiwa tunajua ya kwamba si sehemu zote za Kenya ambazo zimebahatika kuwa na vitega uchumi kama hivi vya madini na kadhalika. Lakini kuna sehemu zingine ambazo zimebahatika kuwa na mbuga za wanyama au kuwa na sera nzuri za utamaduni wao wa kuanzisha nyimbo na michezo mizuri ambayo pia ni rasilimali ambazo zinatumiwa katika hoteli na kadhalika. Mambo ya angazwe na njia wakfu itafutwe ya kuona ya kwamba tunaweza kutega uchumi huu kwa namna gani. Tunapofanya hivi, tujihadhari kwa sababu tunaweze kuwafukuza wawekezaji ikiwa kodi itawekwa kiwango cha juu. Serikali tayari ina kodi ya mapato ambayo inafukuza wawekezaji. Sisi tusidai

asilimia 20 na ilhali tunawatoza kodi nyingine. Kwa hivyo, ni lazima tufikirie tusije tukawatoza kodi za juu na kuwafukuza katika kaunti zetu. Tukifanya hivyo, tutakuwa tumefanya jambo la heri na manufaa katika kaunti zetu zote.

Bw. Naibu Spika. Kwa hayo machache, ninaunga mkono Hoja hii.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Musila!

**Sen. Musila:** Thank you, Mr. Deputy Speaker, Sir. I stand here, first and foremost to support this Motion. In supporting the Motion, I want to say from the outset that the guiding principle in mineral exploitation in this country should be for the benefit of the local people. Having said that, there are many areas that Kenyans should benefit from the exploitation of minerals. I lament that while Kenya has many minerals, we have not been able to exploit them. For many years we have been told about the gold mines in Western Kenya. We have also been told about iron ore in various places. We now have coal in my county. Lately, there is oil in Turkana County. With the exception of the oil that is in full gear for exploitation, we do not appear to have put a lot of effort in exploiting minerals in order that our economy can grow and create employment.

Mr. Deputy Speaker, Sir, I want to focus a little bit on coal, which my friend, the hon. Senator for Homa Bay County alluded to. First and foremost, when coal was found in that great County of Kitui, the issue of investment to exploit or to mine that mineral became a major concern because heavy investment is required to exploit it. It is many kilometres underground and involves making tunnels inside using a lot of equipment. More than that, what is the benefit to the community? There is bound to be misplacement of the community. These are issues that must be addressed even before we talk about exploitation.

I would like to suggest that for any investor coming to exploit a mineral in a certain area, the Government must take hold of some shares so that the community can have some ownership. I want to appreciate that communities may not have money to invest in these companies, but the Government should get those shares and keep them in trust for the community so that as it is organized, the shares can be transferred to them. It is very important for the communities to have commitment of ownership if conflicts are going to be minimized.

The other issue is the issue that was referred to by Sen. Kajwang, of removing minerals from an area to take them to another area. That is one of the conditions that we have put in place in Kitui. We have said that in the exploitation of coal, the raw materials must be used in the area in order that employment is created and locals can benefit directly. We have made that a condition and I hope that any law that the Motion envisages should contain the same Community ownership of any company exploiting a mineral in the area is very important. That way, the community feel they own the process, they share the profits, leave alone the income from the royalties, but they should share the profits directly. So, I am proposing that we go further than the royalties and go into ownership. We should ensure that the raw materials mined in an area are utilized in the area to create employment. I am looking at Turkana, for example. We should not take away all the crude oil from Turkana and ship it to Mombasa for refining. We should refine it at source so that people can get employment.

Mr. Speaker, Sir, regarding the issue of royalties, I support the Motion entirely. The county government should be able to get at least 20 per cent, but then the community there must also get at least 5 per cent to be able to improve their facilities like schools, hospitals and so on directly without relying on the county.

Finally, there is the issue of environment. Last year, the community around where we are going to mine coal, were invited to China to see the mining process in China. I was privileged to accompany them. Environmental conservation is the key to exploitation. There is no point exploiting a mineral then you leave your country in a deplorable condition. When we went to see the mining process in China, we found that all the roads were black, the trees were all black and everything was covered in coal, but the Chinese have done it so cleverly in that they have taken it to Mongolia where people do not live. The population around the areas we are exploiting will be affected negatively by the environment unless we ensure that the technology which will be used is environment friendly. So, I want to urge that environmental conservation be considered even as we talk about exploitation of minerals because even the mining of gold, oil and coal will adversely affect the environment unless we check very carefully.

With those few remarks, I support.

**The Deputy Speaker (Sen. Kembi-Gitura):** Sen. Munyes!

**Sen. Munyes:** Mr. Deputy Speaker, Sir, I want to support this Motion. I want to start by saying that this Motion comes at a time when Kenya is aggressively undertaking exploration of minerals around the country. Kenya is surely endowed with so much resource as the Mover said. These include water, oil, wildlife and the rare minerals. There are some which we have not been discovered and this aggressive exploration will show us some rare minerals. In some areas we have wind and sand which can also be resources for us.

I want to talk about Turkana. As we talk about oil, Turkana is also endowed with water resources. A recent discovery by satellite has shown that Turkana has water potential that is way out bigger than the whole of East Africa put together. The amount of water in Turkana is so much compared to all the regions. I do not know how it was discovered by the satellite. This is something that I want the county to take cognizance of and exploit. As we speak about oil exploration, there is a risk. If a proper environmental assessment is not done to ensure we do not spoil the aquifers then we can stay without the oil and keep our water. We can exploit the oil and destroy the water aquifers in Turkana. The oil company must take that seriously and ensure we do not destroy the water aquifers. It has happened in Sudan and many other countries where it has resulted in bigger problems. River Turkwel flows into Lake Turkana. Trukana County, has three times more potential than Trans Nzoia County when you consider such a water resource. Therefore, the challenge for us is to take serious exploitation of resources.

We have not done much in studies. So, we need in-depth studies to exploit more resources. Twenty per cent as suggested by the Mover is a good figure because we need that kind of money to stimulate growth in those areas. The money will help build schools and dispensaries to assist the host community that is helping to exploit the mineral and which provided land for that particular investment. I want to say that there is much in this country and these resources are mainly in the Arid and Semi-Arid Lands (ASALs), the

low potential areas of this country. The low potential areas are 80 per cent of this country and they include North Eastern Province, Turkana, Ukambani and so on. These are places which were marginalized for so many years. I think this Motion is going to uplift the communities in these areas.

We cannot invest or achieve this if there is insecurity in those areas. Where I come from we have discovered so much along the Sudanese and Ugandan boarder, but we cannot exploit these minerals because they lie along the Uganda escarpment and the Government is not providing security. Without security you cannot even get investors. What happened last week? An investor was thrown out and everything destroyed because we are not even providing security to those investors. How do we benefit if the Government is not putting in that kind of effort? This is a very complicated industry with cartels we have seen over the years where land is apportioned to an individual without the community understanding how it was allocated. Certificates just change hands and people make billions of shillings. This is an issue that this Motion will address and I can say it has surely come at the right time.

With those few remarks, I want to support.

**Sen. Mwakulegwa:** Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to support this Motion. This Motion comes at the right time when the county governments are looking at creative ways of increasing economic performance. Therefore, looking at the natural resources for them to exploit and increase their revenue is the right thing to do.

Let me talk about Taita Taveta County. In this county 62 per cent of the land mass is occupied by wild animals and Kenya Wildlife Society (KWS). About four per cent are the hills that produce water which goes to Mombasa City. We have precious stones. About 70 per cent of precious stones found in the country are in Taita Taveta. We have tiomin, sand and others. However, Taita Taveta is rated as one of the poorest areas. This Motion comes at the right time. With such an endowment of natural resources, we need to give county governments an incentive and capacity for them to exploit them so that they can increase their earnings. We need to look at commercializing mining in Kenya. There have been some explorations in Taita Taveta for the last 50 years, but it is done in an awkward and manual way that does not benefit the country and the county. So, we should give incentives to the counties. I am also suggesting that we should give 5 per cent to the communities. When the land belongs to the community and there is any exploration taking place, we know the companies pay corporate tax to the national government, but there is no direct benefit to the communities where they do exploration. Therefore, I would suggest that apart from 20 per cent which goes to the county, the community or the private land owner should get 5 per cent. We should also be aware that while we talk about natural resources, we have a pending Bill which should be debated by the National Assembly. We also have the Wildlife Bill which is also pending to be debated by the National Assembly. We, as the Senate, want to take care of the interest of the counties by making sure that the natural resources, whether it is wind, sand or any other, if mined, one must pay 25 per cent; 20 per cent to the county and 5 per cent to the communities.

Mr. Deputy Speaker, Sir, it has always been a challenge sometimes to manage money given to the counties, but I propose to make an amendment to the Motion in line ten which reads:- “can only be way of legislation, I suggest that this House establishes a select committee-

- (i) To determine the criteria to be used on payment of the percentages of royalties by investors to the communities where exploration of natural resources takes place.
- (ii) How the revenue accrued will be utilized by the communities.
- (iii) That select committee can look at any relevant issues concerning the mining of natural resources in the counties.

Therefore, if you do that, you should look at all the issues underneath and make sure that they bring it back to the House, so that it is refined. Once it is passed, I am sure the many counties who have not taken advantage of their natural resources will be able to do so. When I was attending the funeral of our brother, the late Sen. Kilonzo, the Makueni Governor publicly talked of exploitation of the people, by the sand miners from Makueni. Therefore, this Motion has come at the right time so that we can help our counties to make sure that the natural resources benefit them and more importantly, benefits the communities where any exploration or mining takes place.

When I talked about Taita Taveta being occupied 65 per cent by wildlife while 28 per cent is the larger farms; the ranches and the rest. The hills take 4 per cent and, therefore, the Taita Taveta people only occupy 6 per cent. In all these, there is unfairness because there is no royalty paid by any of these firms that undertake business in Taita Taveta. I have read the Wildlife Bill which is coming up. It does not make any reference to the payment of any royalties to the counties. Therefore, this Motion has come at the right time.

I beg to support.

**Sen. Boy:** Asante sana, Bw. Naibu Spika. Kwanza ningependa kutoa shukrani kwa Sen.(Dr) Zani kwa kuleta Hoja hii. Maoni yangu ni kwamba Sen. (Dr) Zani alikuwa anafikiria juu ya Kaunti ya Kwale katika mawazo yake. Hii Hoja ni juu ya Kaunti ya Kwale. Lakini kwa sababu yeye ni Seneta mteule mawazo yake ni ya kitaifa. Mimi nitazungumza juu ya Kaunti ya Kwale. Hii ni moja kati ya kaunti maskini sana. Hata hivyo, ni moja kati ya kaunti zenye utajiri mwingi wa rasilimali. Tuna fuo zakuvutia sana. Mwezi wa Desemba, watu wengi kutoka bara huja kuogelea katika bahari yetu. Lakini watu wetu hawafaidiki hata kidogo na bahari na fuo zake.

Bw. Naibu Spika, Kaunti ya Kwale inasambaza zaidi ya asilimia 30 ya maji yanayotumiwa katika Kaunti ya Mombasa. Maji haya hutoka Tiwi na Marere springs. Watu wa Mombasa ndio wanaopata maji mazuri lakini sisi watu wa Kwale tunatakikana tuwe wachafu. Hatufaidiki na maji haya.

Bw. Naibu Spika, tuna mbuga za wanyama. Mfano mzuri, ni Shimba Hills National Park ambayo ni kilomita 30 kutoka Leisure Lodge. Katika mbuga hii kuna wanyama wengi kama vile ndovu, nyati na simba. Lakini watu wa Kwale hawapati chochote kutokana na shughuli za kitalii katika mbuga hiyo. Hata kaunti haipati ndururu.

Sisi watu wa Kwale tumebarikiwa na madini. Na hii siyo siri. Hatukuomba kuwa Wakwale ni Mwenyezi Mungu aliyetuweka katika kaunti hii. Tuna madini kama vile titanium, dhahabu, rubi na kadhalika. Kwanza tuzungumzie hili swala la madini maanake

Seneta amesema kwamba asilimia 20 ipewe kaunti. Ninamuunga mkono kwa sababu asilimia 20 inapewa kaunti ya Kwale kunakotoka madini. Je, pale mjini kwenye kile kijiji kunakotoka madini, watu wa kutoka pale ndio watakaohamiswa makwao; wale ndio watapatikana na zile shida za mazingira, lakini hawapati chochote. Kwetu sisi kuna kampuni inayoitwa Base Titanium ya kutoka Australia. Watu wamehamishwa baada ya Base Titanium kuwalipa watu vizuri. Wakati huu, madini ya titanium yanaendelea kuchimbwa. Base Titanium imejenga shule na hospitali.

Tunalia kwamba wale wenyeji wa pale si wanaopata kazi kwa sababu hawana digrii. Watu wetu hawakusoma. Wataalamu wote wanaofanya kazi hapo ni Wazungu. Mkaazi au mwenyeji wa Kwale hapati chochote. Anaona watu wakizunguka na magari makubwa ilhali hana chake. Hali yake ni ile ile, siku nenda, siku rudi. Sasa faida ya kuwa na yale madini ni nini? Ninawaonea huruma wenzangu Waturkana; kama hali hiyo itakuwa hivyo kule kwao, basi itakuwa mafuta ni jina tu. Hawatapata faida yoyote. Ni lazima wale watu wanaotoka eneo lile lenye madini wafaidike. Wapate nafasi za kazi. Kampuni hii ya Titanium iko pale Mrima. Watu wanaofanya kazi huko wanatoka mahali pengine. Kenya ni yetu sisi sote. Hata hivyo, ni lazima tuwafikirie wenye madini. Sikatai nchi ya Kenya ni yetu sote. Lakini mnatufukuza katika mahali penye madini bila kutufikiria sisi. Jambo hili huleta balaa.

Kuna madini ambayo yako hapo yanayoitwa *Rare Earth* na *Niobium*. Madini haya ni ghali sana. Kila mtu sasa anataka kwenda Mrima. Lakini watu wa Mrima wenyewe hawapati faida yoyote. Ninaunga mkono kaunti yenye madini itengewe asilimia 20 na watu wa Mrima wapate haki yao. Ikiwa Serikali itachukua asilimia moja, je, watu wangapi wa Mrima watafaidika? Hakuna hata mmoja. Tunasema kwamba wale watu wa Mrima wafaidike kwa nza, kisha Kaunti ya Kwale na nchi ya Kenya kwa jumla. Hata sisi ni Wakenya kama Wakenya wengine wote. Kama ni hospitali au shule wajengewe kwanza. Ni lazima watoto wao wapewe *busary* ili wajiunge na vyuo vikuu.

Haifai sisi kuzungumza juu ya madini, ikiwa ugavi wake hautawasaidi wenyeji. Ni aibu kuna watu wanaolinda madini wakiishi katika hali ya umaskini. Hawana chochote. Ni maskini hohehahe. Hali hii haikubaliki, ndio maana mnasikia wengine wakisema kwamba “Pwani si Kenya”, kwa sababu wameonewa. Hii ni Kenya ya aina gani? Kwa mfano katika Mombasa Port, asilimia 70 ya wafanyakazi hawatoki Mkoa wa Pwani. Si huu ni ukabila? Huu ndio ukweli wa mambo. Kwani ni pwani pekee ndipo kuna mashirika ya umma tu? Ukweli usemwe hata kama unauma. Hata kama unakasirisha, ni lazima usikie ukweli. Mashirika haya ya umma yako Nairobi, Kisumu, Nakuru, Kakamega na kwingineko. Mashirika hayo yanawafaidi watu wa sehemu hizo. Haya ndio mambo yanayoleta utata. Utata huu ndio unafanya hii *young generation* ya akina Hassan kutokubali mambo haya kwa sababu hao ni *digital*. Ni kwa sababu ya hali hii ndio ninaunga mkono Hoja hii. Ninasema Hoja hii ina umuhimu na itekelezwe vile ilivyo.

Kwa hayo machache, ninaiunga mkono kikamilifu Hoja hii.

**Sen. (Prof.) Anyang’-Nyong’o:** I rise to support this Motion and to congratulate Sen. Zani for bringing it to this House. As my colleague Boy Juma Boy has said very eloquently, our responsibility in the Constitution is to look after the affairs of the counties. There is nothing better in looking after the counties and ensuring that the

natural resources that we have in our counties are, first and foremost, used by the people for whom God meant to benefit from the resources. God was not absent minded when he placed those natural resources there and made sure that the people were there. In as much as God was not absent minded when he placed Adam and Eve in the Garden of Eden and requested them to look after God's creation in that particular spot of the earth. I think it would be unfair really for anybody or the national Government to carry out this exploitation of the natural resources without paying attention or looking after Kenyans who live there. This does not mean that these resources will not help others; they will definitely help them.

One of the very clear examples of the development of natural resources in one part of Kenya which are then used elsewhere is that of water. We, in Nairobi, depend on water resources from around the City. Sometimes you can go to places where this water comes from and you look at the people who live there in dire poverty; this is the highest level of negligence. That we benefit from a very vital element of life called water should lead us to look into the affairs and the livelihoods of those from around whom these resources are exploited. So, I think this particular Motion is very sensitive to what we might call mutual social responsibility among Kenyans. In Sessional Paper No.10 of 1965 a philosophy was developed that Kenya will develop under the value of mutual social responsibility. In other words, that every Kenyan takes care of and thinks of a fellow Kenyan. This is how we would develop a nation whereby there is solidarity, respect and concern for each other.

Mr. Deputy Speaker, Sir, the value behind this Motion is really appreciated. I had a discussion with Sen. (Dr.) Zani and Sen. Mwakulegwa with regard to an amendment being brought to this Motion towards the end. That should make this House responsible for the development of the law to implement this Motion. My feeling is that if we leave this responsibility to the Government, it may take quite some time. You will remember this was our experience at the National Assembly. For the time I was there, we would pass a Motion urging the Government to do something and this became a ritual because implementation depended on when the relevant Ministry would take note of the Motion and take action. I am sure that Sen. Dan Mwazo and Sen. (Dr.) Zani will respond to that.

Thirdly, I agree with Sen. Mwazo and Sen. (Dr.) Zani with regard to fixing a 20 percent royalty payment. I think the Senator for Migori also said that if we fix this at 20 per cent of the total outlay, it could frighten certain investors especially during the early period of investment when an investor lays a lot of capital investment. The Government attracts investors by giving a five year grace period where you do not pay any taxes so that an investor can put in their investment and make sure that things are going on. When they begin to make profits, the profits are shared among the people and the Government on a certain percentage. So, if you lay down a 20 per cent turnover right from the beginning, Sen. (Dr.) Machage was right, you could scare the goose that lays the golden egg so that it flies away and we will never get the golden egg.

As my colleagues have discussed, we will later on have an amendment being proposed to make sure that the percentage is fixed after exchanging discussions between Members of this House and those who are knowledgeable about issues of taxation and so on.

Secondly, as Senators, we will be responsible for developing a law that will do two things. First, one that will reward our people accordingly following the pleas of Sen. Juma Boy and secondly, ensure that investors are attracted to putting their capital in exploiting these minerals. I speak coming from a region called the Lake Basin Counties. These include Homa Bay, Migori, Nyamira, Kisii, Kisumu, Siaya, Busia, Kakamega, Vihiga, Bungoma and Trans Nzoia. If you look at all these counties, you will see that they share certain geographical characteristics. In those geographical characteristics, you will find certain minerals. As Sen. Wetangula said, this rare earth metal which exists even in that part of the world has not been exploited. Tremendous gold deposits are to be found in a radius that stretches from northern Tanzania into Homa Bay, Migori, cutting across Kakamega, Bungoma and then disappearing through Turkana. If this is studied properly, you will find that there are a lot of mineral resources available there.

We also know that Tullow, the oil company that surveyed Turkana and discovered oil has been very active in the Lake Basin Counties looking for oil. I know for certain that in Nyakach, my county, there is potential and that we may have oil as much as Libya has. If that is true, most Senators should befriend me rather early because I will be a Senator very highly sought after.

*(Laughter)*

We should, as Senators, be moving ahead and developing laws that are congenial to this country. We could arrange a retreat and invite some of these potential investors; the people doing explorations, to come and talk to us about mineral potential in this country. I remember that in the last Cabinet, the Minister for Environment and Natural Resources, Mr. Mwakwere, presented a Cabinet Memo which was very interesting. It gave us a bird's eye view of the mineral potential of this nation. It was quite mind-boggling.

In that retreat, we will be educated by people from the Department of Natural Resources on where our minerals are, what kind of minerals we have, the potential for exploiting these minerals and the kind of investors that we should have. As Senators, we should attract investors to come and exploit these minerals. We are now at a much better position more than other African countries that have had a lot of mineral resources but whose minerals have been pillaged. I know, for example, a country like Congo, which even as recently as five years ago, had areas where companies from the West had built air fields. They fly in with aeroplanes, crack crude mineral resources like gold among others using mercenaries and put them in the planes so that they are refined elsewhere.

I know a friend of mine from Argentina who was hired by the Congolese President to try and lay down a regime for taxing these companies. He went there to try and find out how he would tax them but this was very difficult. These people come overnight and scoop all the gold and go away. You must have an army before you think about taxing them. So, the sheer fact that we have a state which is organized means that we should take advantage of it and put in place a law that will protect our people against mineral exploitation.

I beg to support.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. I congratulate Sen. (Dr.) Zani and I am proud that she belongs to the same side as I. She has brought such a wonderful national Motion.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator Wetangula!

**The Senate Minority Leader** (Sen. Wetangula): A Senator on my side has brought a national Motion. That is why I am proud of her.

**The Deputy Speaker** (Sen. Kembi-Gitura): That is better.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I will encourage Dr. Zani, towards the end, to get a colleague – I am not in the habit of amending Motions – to amend the Motion so that the legislation is not left to the Government because this Senate, in a bipartisan manner can draft the Bill, bring it to this House, pass it and give it effect. If we call upon the Government, you will find that their priorities are different and this will not come at the time we have designed. The essence of urgency will be different.

Secondly, I will encourage the distinguished Senator that in drafting the Bill, she should seek expertise or advise from the Commission of Mines, the Kenya Revenue Authority (KRA) and the Treasury on the taxation regimes and programmes and look at the best practices elsewhere. I say this because recently, the President of Zimbabwe attempted to strangle mining companies by insisting that 50 per cent of everything that they do must be given to the state. They then parked up and left. That is what Prof. Anyang'-Nyong'o was talking about when he mentioned the goose and the eggs. We should be conscious about that.

That said and done, this is a wonderful Motion. Last year, I was travelling from Nairobi to Ghana and I sat next to a professor, an original medic, who has since studied and has about three PhDs on Mining, Petroleum and general resources. He is an adviser to about 15 governments. He told me – I believe him because he is doing a study on Kenya – that Saudi Arabia has oil reserves to the tune of 970 trillion dollars. He said that there was clear indication from satellite surveys that the mineral resources in Kenya are more than three times that. This is 970 trillion dollars and we are three times that. Saudi Arabia's is oil while ours are minerals. I believe him and that is why you see a stampede towards Africa. Everywhere in Africa, there is something below where we are standing. If you go to the Indian Ocean, you will find massive minerals down there. There is natural gas and oil, among others.

As we take drives along the Mt. Kenya region, look at simple things like water, for instance, the Ndakaini Dam; all the water cascades to Nairobi but the neighbours have nothing. Look at all the water from Kilimanjaro, the Maasai Community has to wait for elephants to dig up and break the pipes so that they can get some water. This is replicated everywhere. It is the same case with the Pokots with the famous Turkwell Gorge. All these people know is that there is a big dam somewhere when they are dying of thirst two kilometers away from the dam.

This country, in the last five years, has made tremendous progress in finding and identifying our natural resources. Iron Ore in Taita Taveta is classified as 97 per cent pure more than you can find anywhere else. There is oil in Turkana and expected oil in the Lake Basin and natural gas in the Indian Ocean and rare earth metals that Sen. Juma Boy

was referring to. In fact, Mrima Hills, it is said, from research, has the second largest deposits of rare earth metals or Niobium after China; a very key mineral. If you go to Maasai land, Kilgoris, where monstrous fraud has been going on for the last ten years, a South African company frightening away – I do not know why Sen. Anyang’-Nyong’o did not mention Kilgoris, they are carrying away what they are describing as “soil” to South Africa, ostensibly to go and research but everybody knows that they are carrying away gold. This is replicated everywhere. Last year – I want to encourage Sen. (Dr.) Zani to also look at this – we drafted a Mining Bill that went through Cabinet but now I have learnt it did not go through Parliament, where it was recommended that where such minerals are, 5 per cent should go to the community that has been the ancestral custodian of the mineral. It was recommended that 15 per cent goes to the county. The remainder was to be shared between the national government and the investor. These are matters that can be looked at. The bigger the cake, the smaller the percentage whereas the smaller the cake, the bigger the percentage. That is how international sharing of issues in wealth work. That is going to help this country.

If you look at the communities that have been keeping these resources like Kitui with coal, you will find that everybody is cascading towards Kitui wanting to grab the coal. Everything is being talked about except the people of Kitui. Look at the Maasai Mara, you know about the scandals of Maasai Mara, councilors from Narok book presidential suits at Serena for weeks at the expense of the ordinary person because there is neither a framework nor legislation. Those who are enjoying the perks of Maasai Mara would rather ensconce one councilor rather than the community. The moment a country goes to a level like Congo, where individuals take over the position of the state and the benefits on behalf of the state, and do not pass them on to anybody, then you have taken the wrong direction. This is because this is a very rich country with very poor people. This Senate, as the custodian of counties, must legislate to help my brother-in-law from Pokot here to graduate from cattle rustling, so that they can---

*(Laughter)*

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Deputy Speaker, Sir. Is Sen. Wetangula in order to imply that the people of West Pokot are cattle thieves?

**The Deputy Speaker** (Sen. Kembi-Gitura): In fact, he referred to you as a cattle rustler.

Sen. Wetangula, did you refer to him as a cattle rustler?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, it is with a light touch. My brother-in-law knows that his community and the Turkana have running issues about who owns more cattle and who does not.

**The Deputy Speaker** (Sen. Kembi-Gitura): If Sen. (Prof.) Lonyangapuo takes it in that spirit, then that is alright.

You can proceed!

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, that is how he took it, otherwise, I can take my sister away from him.

Mr. Deputy Speaker, Sir, West Pokot County has coal and limestone, enough to generate and produce cement for the whole of this region. There are people running there and talking about the resources without talking about the Pokots, because they are irrelevant. This is because somebody is sitting in Nairobi and handing over a licence to go and mine gold in Macalder or Kakamega or take limestone from Pokot, without caring whether or not there are people there. That is exactly what Sen. Boy Juma Boy was talking about. We have become so impersonal in our dealings with our own nationals that Kenyans are mere statistics when we are talking about distribution of resources. It is amazing how you go around the country and find that even in water-secure counties like yours and mine, women are still scrunching by the roadside for water. These are the resources that Sen. (Dr.) Zani is talking about. This Senate and Upper House will go a long way in the history of this country for being able to do what we have not done for the last 50 years; legislating for the ordinary person. We are not just legislating for the ordinary person, but actually arresting and nipping in the bud the situations that you see in the Nigerian Delta; where people see others fly in helicopters in obscene opulence and they are scrunching to eat grasshoppers, yet they have been the custodians of these resources. This is the situation that we are forestalling and nipping in the bud. This will immensely help this country.

Mr. Deputy Speaker, Sir, if you go to Loiyangalani, people fly in helicopters to assess the volume of wind – a natural resource – so that they can generate 400 megawatts of power and sell into the grid. If you ask them who lives at Loiyangalani, they will not even know. The Rendile, Turkana and El Molo who live at Loiyangalani are statistics and then, they come and say: “Corporate social responsibility: We built one classroom for a nursery school.” That is what they talk about. When they talk about corporate social responsibility, they gave the area councillor some money to buy *piki pikis* for use, which he never bought. It is in their records. We must move away from tokenism and have a true country where resources belong to the people of Kenya, and they feel, share into and benefit from these resources.

Mr. Deputy Speaker, Sir, let me leave room for other colleagues to benefit. I want to urge Sen. (Dr.) Zani that she should find time to find a colleague to amend this Motion, so that the production and tabling of the Bill is not the issue of Government, but this Senate.

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

**Sen. Ong’era:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I rise to support the Motion.

Mr. Deputy Speaker, Sir, first, like my colleagues, I would like to commend my sister, Sen. (Dr.) Zani, for bringing to this House a Motion that really touches the core of our issues here. This Motion is an ordinary man’s Motion. I want to reiterate what Sen. Wetangula has just said, especially with regard to the ancestral communities where the natural resources mainly belong. These ancestral communities are actually living in abject poverty, yet they are the richest people. They have made other people billionaires either in our country or other countries, who are so-called corporate entities, yet our people continue to live in abject poverty. I have the case of Kisii County where our people mine a mineral called the Kisii Soapstone. Our people in this part of the country

are actually living in abject poverty, yet the merchants of impunity in the name of third operators or brokers, continue making a lot of money and, in fact, even go to the extent of exporting this soapstone to other countries like in the European Union. The real people who actually mine this soapstone are still living in very sad conditions.

Mr. Deputy Speaker, Sir, I would like to also ask the Mover of the Motion to consider, perhaps, having it returned to the Committee on Agriculture, Land and Natural Resources, so that it can prepare legislation that will set a proper criteria in determining the categories of the natural resources and also look at what percentages to apportion. We may think about apportioning percentages based on concession or annual gross turnover of these corporate bodies, which continue mining these resources. The other thing that would be looked at in this legislation is the way this money will be used should we give it to them within the counties, given that we do not yet have a legislation. I would want to propose that the ancestral communities should, perhaps, be the greatest beneficiaries not just for the sake of it, but with clear categories. For example, the money should be used for issues that will help them, like medicine and especially for maternal healthcare; women and children and widows and orphans who are increasing in our country.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support.

**Sen. Mungai:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Motion, that tends to ensure that, at least, a portion of the resources that are close to our communities is left to help that community.

Mr. Deputy Speaker, Sir, it is true that for a long time, in our country, very little has apparently been going back to the communities, where these resources are found. I have been to Mombasa and Shimba Hills and what Sen. Juma Boy said is true. You see a lot of poverty in areas where there are lots of deposits of minerals and exploitation of the same. What I would propose on this particular Motion is that when we talk about natural resources, we should also look at all the resources in other sectors, like rivers that have dams that are producing electricity in places like Tana River and Ukambani. We should ensure that these areas also benefit from the same percentage that is supposed to be left in areas where there are minerals underneath. In my Nakuru County, we have the geothermal resource, which right now is the most eco-friendly in terms of electricity generation in our country. But in the areas where it is based, there is very little that the community around can be proud of. So, my prayer is that this Motion is supported by the Senate and passed, so that those communities can benefit through the various counties that they are based.

Mr. Deputy Speaker, Sir, I beg to support the Motion.

**Sen. (Prof.) Lesan:** Thank you very much, Mr. Deputy Speaker, Sir. Indeed, I had been waiting the whole morning to say something in the House. I am happy that you have given me the opportunity to ventilate on the Motion.

Mr. Deputy Speaker, Sir, first, I wish to thank Sen. Zani for bringing this very useful Motion, which I think supports what we have been talking about all morning, which is, devolution; taking resources to the people or letting the people know that there are resources already within their areas. So, I think that this is a very useful Motion which all of us should ventilate on and actually support.

Mr. Deputy Speaker, Sir, I come from the western side of the Mau Forest. From this Mau arise three very important rivers. These rivers have an altitude of 2,200 metres and move down to the Kano Plains and reach up to 1600 metres. This is a drop of about 600 metres of massive amounts of water.

Mr. Deputy Speaker, Sir, there is a lot of energy and I am sure it can be utilized if appropriate laws are put in place. A community along these rivers in Bomet County called *Iriap Maina* has actually generated electricity by tapping the energy in these rivers. The only problem that they have at the moment from maximizing the benefits from these rivers is the existing by-laws as regards to the sale of electricity. The by-laws existing state that you need to generate a certain amount of electricity to be able to sell to the national grid. This young group of enthusiastic residents along these rivers has actually generated about 500 kilowatts and this is inadequate. So, it cannot meet the requirements of the by-laws which exist. So, I am grateful that this Motion has been brought so that even the by-laws which are governing the sale of commodities arising from efforts from *wananchi* like this one can be modified to benefit them.

Mr. Deputy Speaker, Sir, another resource that is currently bringing in a lot of revenue are things which we cannot touch or see. These are things like air. We do know that Safaricom which is selling a commodity that we cannot touch or see has made the largest amount of money in this country and even in the history of this country. There is also another commodity that falls under this category. We have Mau Forest and there is a huge trade which is going on of carbon. At the moment, there are no by-laws which are sufficient enough to enable the people residing in these areas to benefit from carbon trading which is going on. This is a product which is inexhaustible and which the people in the area can benefit from. I am grateful that this Motion has come here and we can now start to legislate. This is the Senate and it can legislate. We can legislate such that the public who are living within forests, protecting and generating them, can actually benefit from this inexhaustible resource which is on carbon. Carbon is used to clean our environment.

Mr. Deputy Speaker, Sir, as we go along this path, I am sure as the public become aware of the usefulness of the resource within them, there is certainly bound to be some conflict. A lot of rivers which we have in our communities form boundaries between several counties. I am sure that when the public become aware of those rivers, I can assure you that there are likely to be conflicts within counties. Therefore, the Senate needs to legislate in order to have peaceful co-existence of counties as they share the natural resources.

There is also another resource existing in our counties, especially where I come from. There are large tracks of very fertile land which is currently being occupied by foreign companies who entered into treaties with the Government many years ago and they are paying a lease fee which is so insignificant. At the moment if land is under the counties, some of these treaties which were made many years ago can be revisited and appropriate leases made so that *wananchi* can benefit from the rich agricultural land which is productive but it is under production at the moment by foreign individuals. If legislation can be amended so that counties can revise the leases which are existing without necessarily chasing the goose that lays the golden egg, so that the communities

can get some benefits out of the rich agricultural land currently under foreign owners, I am sure this will not go against any law because it does not prejudice the national economy of the country.

Mr. Deputy Speaker, Sir, I also wish to support the amendment of introducing a select committee so that it can look at all the laws that are appropriate in this case in order for the public to benefit from the benefits accruing from using the natural resources within their land.

**The Deputy Speaker** (Sen. Kembi-Gitura): Is that an amendment?

**Sen. (Prof.) Lesan:** There is a suggested amendment of setting up a committee and this is what I support because there are many small laws in various places that can be put together. I think we can widen the scope of this committee so that they can put together all these laws and therefore make maximum use of the natural resources; which is the next step of devolution in this country. We should recognize the potential we have and look for ways to make use of the untapped potential existing within our counties.

With those few remarks, I support this Motion.

**Sen. Chelule:** Mr. Deputy Speaker, Sir, I am Sen. Liza Chelule and I stand to congratulate the Mover of this Motion, Dr. Zani. I support it for the following reasons. When she was moving this Motion, it came into my mind that we have resources in our counties especially at the community level. As I am talking today, I hope we have all been enjoying this Keringet Water. It is a natural resource from my area. I am not aware and there is nothing that has been remaining at the community level to address social issues. I am so proud today that if this Motion is successful, the people of Keringet will benefit. I represent students from needy families who have not been able to go to school because of school fees and if the investors were remitting a certain percentage to the community or to the counties, I believe these children could be in school. What I wanted to advice the Mover is not to talk about counties only but to scale down to communities. I suggest that a bigger percentage should remain at the community level. I would not suggest that a bigger percentage go to the county but to the community.

Mr. Deputy Speaker, Sir, we are aware that there are tree plantations and it is happening in our counties. Many investors engage in tree plantations but nothing remains at the community level. So, if this Motion, which I believe will be successful, goes through, I will be the happiest person because I know there are those resources that will remain at the community level and will indeed address very many social basic needs.

Sen. (Prof.) Lesan was talking about carbon credit. It is an exercise that is going on now but the community is not aware and we do not know how they should benefit. The issue of sensitization in this matter again is very important and I would urge that a committee be formed to look into this Motion because everything should have been mentioned. In the first paragraph, Sen. (Dr.) Zani was able to only mention the oil deposits, wildlife and minerals but I think everything was supposed to be included. If there is a committee that is going to sit and look at this Motion critically, everything that is under natural resources will be mentioned.

With those few remarks, I beg to support.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I rise to support this Motion and to also join my colleagues in thanking Sen. (Dr.) Zani for bringing it at this

time. It is coming at an appropriate time especially now that the new Government has come up with a new Ministry called Mining. In Vision 2030 that we talk about in Kenya, a number of manufacturing plants are going to be started in the regions where we have a lot of mineral deposits. One such place is West Pokot County where I come from and where Members of this House need to know that it is the only county with the largest number of types of mineral deposits in Kenya. There are over 36 types of minerals. In the near future, a number of counties will have to work with us in the sense that when we start developing these natural God given resources, you will come to me at the border of West Pokot and Trans-Nzoia County. In mentioning this, my neighbour Sen. Munyes, recently discovered oil in Turkana and there is a scramble, people are rushing there. There is need, therefore, that this law should be put in place so that a substantial measure of percentage of the resources that we did not apply for and which God gave us remains to develop this area. For your information, West Pokot side bordering Ngamia One may be having the main tank that produces this petroleum oil. The moment we start doing ours and elevations are there because we are at a lower level than our neighbouring county, we may be able to get more of this oil. In mentioning this, a number of people have come to West Pokot County unnoticed. They did not go through the leadership in the county and they have prospecting licenses in the name of going to do mineral exploration. The county council and the leadership at that time did not know. We even hear that some people own title deeds in areas where there was no title deed in the whole area. Although we are saying that these minerals will be managed by the national government, before any license is given, I propose that there should be wider consultations with the county governments so that at every level, we know who is coming to invest there. This will eliminate many quacks pretending to be having prospective licenses yet they hold them and then sell them.

We have agreed with the Governor and the leadership of the County of West Pokot that they come up with laws that will revoke all this. Anybody who wants to get a prospecting license must notify the people on the ground so that we avoid the case where we have people who come to carry some samples pretending that they are going to do tests where they carry lorries and lorries of our precious mineral called chromite. This mineral is so special but we did not know. So, they take advantage of the people's ignorance because the people are not educated in some areas. Again, we are privileged to be the only county in Kenya which hosts Turkwel Power Generating Plant which is run by KenGen and constitutes nearly 20 per cent of the power that we use annually in Kenya. As we mention this, you will be surprised that nearly 30 years since this plant was put up, which carries trillions of cubic metres of water, no single shilling goes back to the people whose land was taken by the water. There is no percentage of corporate social responsibility that goes there. There is no hospital that has been built. They only inherited a school that was built by the contractors of this dam, the French. As I speak to you, even desks that were left by the contractors are broken but no shilling goes back to repair them. That is why I support this Motion.

Mr. Deputy Speaker, Sir, I will go further to say that in the case of West Pokot, this plan has been there and the water has become a breeding ground for mosquitoes and crocodiles which we did not have before. There is no road where people can cross from

one side of the river to the other side to go and seek medication. I will even propose that when this Bill comes, they should even pay for the years they have been there so that the community can benefit. These are the people of Toyo, Endo and Kasai who have suffered and by extension, the people who live in Ombolion area. When water displaces people---

**Sen. Wetangula:** On a point of information, Mr. Deputy Speaker, Sir.

**Sen. (Prof.) Lonyangapuo:** Yes, proceed!

**Sen. Wetangula:** Thank you, Sen. (Prof.) Lonyangapuo, for allowing me to inform you for free that under our Constitution, you cannot have retrospective legislation. So, you cannot legislate today and impose compensation for yesterday. It can only be for tomorrow.

**Sen. (Prof.) Lonyangapuo:** I thank my colleague for informing me. But there are two items that he needs to know; compensation for the land where the water sits is as current as anytime in future. If you have not paid for it, you pay at that time. There may be an argument where you are saying that the water has been used and not paid for. As I mention this, there may be need for my colleague, Sen. Wetangula, to start thinking of the water he is getting from West Pokot County. There is water you are getting from the Kapolet Forest. We shall soon be giving you a bill together with the people in Trans Nzoia so that we benefit from the resource that we have. We are taking care of the forest and we shall continue to do so. So, for you to continue enjoying this resource, you have to pay for it.

Lastly, we have KWS at Nasolot where we have the largest elephant in Kenya and we keep this elephant for free. The people who are neighbouring us have not benefited from this resource, including employing them as wardens. You do not need to speak English to know how to keep the wild animals that you were born with. As investors come in, they should be cautious and keen to the extent that they take care of the surrounding communities. There are many natural resources that are in West Pokot and if we have investors, it is upon us to make laws that will encourage our people to come and invest in some of those counties which have these natural resources. The communities should benefit by being employed and also through taxation.

In conclusion, we also have the ruby and the limestone that for a long time was being carried from Kenya to Uganda without any tax being paid until three years ago when we stopped it. We have the largest deposits of limestone that can carry over five cement factories. It is true that West Pokot is the granary for limestone. In the years to come when Athi River is exhausted, all cement factories will lead to West Pokot County and we are there to welcome them. We will be anticipating that these laws will have been put in place so that the community will not suffer the way they have been suffering.

We also have enough sand that we supply to Uasin Gishu County. Eighty per cent of the buildings in Eldoret were built by sand from West Pokot. The same applies to Kitale and Bungoma. As we address this, we want to see how we can benefit because they have been scooping it for free. We have many things that we can benefit from as counties if this Motion is passed and it graduates into a Bill.

I support.

**Sen. Wangari:** Thank you Mr. Deputy Speaker, Sir. I want to join my colleagues in congratulating Sen. (Dr.) Zani for bringing this Motion to this House. The timing is

perfect for two reasons; first of all, it is the time we are dealing with the Division of Revenue Bill, and I think we did that in the morning. This definitely adds to the voice of devolution which is the sole mandate of this House to protect. I therefore, support it.

I want to comment on something that was brought to the Committee on Finance, Commerce and Economic Affairs, and it was also in the Division of Revenue Bill about deficits in the counties. This is the issue of the capacity of counties to run and to absorb what would be given to them has been raised. I think having this come to this House is one of the steps that we will be taking to make sure that we build the capacity of the counties to bridge the gap between the deficit that we have seen. We have seen the highest deficit is Kshs7 billion. We have others that have deficits of Kshs3 billion and Kshs2 billion. This will build the capacity of the counties to generate their own revenue and make sure that they reduce the deficit to fund their budgets. Secondly, I think yesterday there was a photograph in one of the daily newspapers of women in Kakamega with a caption; “Gold the hard way”. When I looked at that photo, I could only see the zeal of the women and what they were going through, trying to wash mud, sieve it and come up with something at the end of the day. This zeal of the people can only be enhanced and rewarded by taking the resources to the people. If we do not do that, this Upper House will be failing.

Mr. Deputy Speaker, Sir, if you look at the Turkana oil exploration mission, there was already a public uproar that was led by one Ekuru Aukot of being very insecure as a county because things will come and move very fast and the villagers will be left wondering what happened. As a Senate, I want us to create what I would call equity in making sure that we raise counties that are not having villagers. One village which has one vehicle, we should strive to make sure that every homestead has a bicycle so that we do not end up having a few people who are millionaires and millions who are paupers. I beg to support and add my voice to the proposed amendment, that we do not limit it to minerals. For example, when the people of Gatanga complain that they do not have water, we become a laughing stock because that is also a natural resource that will help other counties. Again the villagers will be left wondering what happened. We should expand the scope so that we do not limit it to just minerals but include other natural resources.

Finally, the team that will be considering this Motion should also consider employment so that the issues which have been raised here by the Senator for Kwale County are also taken care of, so that if you have a natural resource in a particular area, the employment quota should also be applied so that the locals are given first priority and it should be put in law that they will be given the first priority where they are qualified so that it also benefits the area and the people.

Thank you.

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, I rise to support this Motion. Indeed, this Motion is not only timely but gives the people of this country, specifically the people of each county who are the stakeholders, the opportunity to be participants and to belong to their county by participating in activities that affect their counties.

In my county of Kiambu, if I can use that as an example, we have several natural resources which the people of this county have not benefitted from. For a long time, since

Independence, the County of Kiambu has been the main provider of water to the City of Nairobi. Having been born and brought up in Kiambu, I know that none of the people in Kiambu have benefitted from that resource.

We hold a lot of reserves for diatomite in Kiambu County which is yet to be exploited. I envisage a situation where if any investor was to come to my county and exploit that natural resource and ignore the fact that he should involve my people, that would be disastrous. For a long time, since Independence, a company called Carbacid has been mining carbacid in my county. Indeed; among the most popular companies known to have made large profits continuously is Carbacid. The people of my county are not beneficiaries at all. For that reason and being a Senator in this Senate that protects counties, I support this Motion.

For this Motion to be effective and for it to cover the envisaged scope, I propose an amendment to it. I will seek your permission to move the amendment. The amendment I seek to move will change the Motion to read as follows:

**The Deputy Speaker** (Sen. Kembi-Gitura): Let me get it right. Are you moving an amendment?

**Sen. Wamatangi:** Yes, Mr. Deputy Speaker, Sir. I am moving an amendment.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay, go on.

**Sen. Wamatangi:** Mr. Deputy Speaker, Sir, I beg to move the following amendment to this Motion:-

THAT, the Motion be amended by deleting all the words appearing between the word "Senate in the eleventh line and the word "counties" appearing in the fourteenth line and replacing therewith the following words:-"resolves to establish a Select Committee to determine:-

- (a) the criteria to be used in payment of percentage of royalties by investors in the counties where the exploitation of natural resources occurs;
- (b) how the revenue accrued will be utilized by the country and counties; and
- (c) any other relevant issue that may arise in regard to other existing legislation; and the Committee shall comprise the following Senators:-

1. Sen. Peter Mositet
2. Sen. Paul Kimani Wamatangi
3. Sen. Danson Mwazo
4. Sen. Boy Juma Boy
5. Sen. (Prof.) Anyang' -Nyong'o
6. Sen. (Prof.) John Lonyangapuo
7. Sen. Catherin Mukite
8. Sen. Liza Chelule
9. Sen. (Dr.) Agnes Zani
10. Sen. Stephen Sang'

The Motion should read as follows:-

THAT, aware that various counties in Kenya are endowed with natural resources such as oil deposits, wildlife, minerals, water among others; appreciating that their capability to exploit and utilize the resources varies according to economic and technical potential; cognizant of the fact that under the

devolved system of government, the county's role in the creation of national revenue is critical; concerned that there may be no direct and proportional share on the basis of the revenue that a county is able to generate since equitable sharing of revenue raised will be done by the national government; affirming the need for direct benefit from the proceeds of the said natural resources to the local communities, especially in marginalized counties; aware that imposition of tax by national or county government can only be by way of legislation and that only the national government can impose tax; the Senate resolves to establish a select committee to:-

- a) determine the criteria to be used in payment of percentages of royalties by investors in the counties where the exploitation of natural resources occurs;
- b) determine how the revenue accrued will be utilized by the country and counties; and,
- c) any other relevant issue that may arise in regard to other existing legislation.

The Committee shall comprise the following Senators;

1. Sen. Peter Mositet
2. Sen. Wamatangi Kimani Njoroge
3. Sen. Danson Mwazo Mwakulegwa
4. Sen. Boy Juma Boy
5. Sen. (Prof.) Anyang'-Nyong'o
6. Sen. (Prof.) John Lonyangapuo
7. Sen. Catherine Mukite Nabwala
8. Sen. Liza Chelule
9. Sen. (Dr.) Agnes Zani
10. Sen. Stephen Sang

I beg to move and to request Sen. Mositet to second the amendment.

**Sen. Mositet:** Thank you, Mr. Deputy Speaker, Sir. I rise to second the Motion.

This is one of the best Motions since this House started conducting business. It has been brought by a respectable Senator and that shows that this House is dynamic. This is an amendment that will assist the entire country and in particularly those areas which are endowed with natural resources; found on the surface of the earth like wind, water, limestone or even some soils. There is something that was not mentioned, magadi, a resource which is in my county.

As we seek to ensure that our counties are uplifted, we should look at the areas we refer to as marginalised. These are the areas where you find the poorest people of this country living and those are also the areas endowed with minerals. It is good if we can come up with good amendments, like the one that has already been proposed, so that at the end of the day, when they are passed and a Bill is brought to the House, the counties can benefit more. I believe that with such amendments, we will uplift the standards of livelihood in our areas and help counties that are benefiting from the Equalisation Fund to be at par with those that we feel have been favoured in one way or another in the past.

I stand here to second and say that this will be the best amendment.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, the amendment has been moved and seconded. For the purpose of this amendment, we will proceed under

Standing Order No.52 (5) in which we want to leave out some words and insert new ones. According to the Standing Orders, I will propose the question.

Look at Standing Order No.52 (5) where it says;

“Upon any amendment to leave out words and insert or add other words instead, a question shall first be proposed “That, the words proposed to be left out be left out of the question”, and if that question is agreed to, the question shall then be proposed, “That, the words [of the amendment] be therein inserted” (or “added”), but if the first question is negated, no further amendment may be proposed to the words which it has been decided shall not be left out.”

The issue is whether or not you want to go on with debate on the removal of those words noting that we have only 30 minutes before the Mover is asked to reply.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, there is removal and insertion and there is a composite amendment. So, are we debating the composite amendment?

**The Deputy Speaker (Sen. Kembi-Gitura):** That depends on how you understand Standing Order No.52(5).

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir that is how I understand it.

My own understanding of it is that we are not looking at it in totality. If you so wish, we can look at the whole amendment as proposed but then we will vote twice under that Standing Order.

*(Question of the amendment proposed)*

*(Question, that the words to be left out,  
be left out, proposed)*

*(Question, that the words to be inserted in place  
thereof be inserted, proposed)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, after hearing the level of consultations, I do not think that there is any Senator who has a problem with the amendment. For the Senate to benefit from this positive Motion, it is good that we have a Select Committee that will fast track everything so that we arrive at the proposed Bill as soon as practically possible. Consequently, I support the proposed amendment, the deletion and insertion as you have ably guided us under Standing Order No.52(5).

In so doing, I want to move that the House, under Standing Order No.97, adjourns Debate on this Motion taking cognizant of the fact that this is a county Motion. Therefore, any vote on any amendment or the whole Motion would be by delegation. Looking at the Chamber, many delegations are not here. We have a precedence set; a ruling by yourself and fortified by your brother, the Speaker, that, indeed, any Senator has the right and can move that the House adjourns any vote on any Motion or on any

Bill especially those with important and far reaching positive consequences on the counties so that we do not lose the benefits that underpin such a Motion.

Therefore, I want to move that you exercise your discretion under Standing Order No.97 that the Debate be now adjourned so that tomorrow, at a time you may choose, you can---

**The Deputy Speaker** (Sen. Kembi-Gitura): Senator, are you proceeding under Standing Order 52 or Standing Order No.97?

**The Senate Minority Leader** (Sen. Wetangula): They more or less mean the same thing.

**The Deputy Speaker** (Sen. Kembi-Gitura): No, they do not. You better decide on which one you are moving.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, although Standing Order No.97 would apply, Standing Order No. 51(3) is more relevant.

Thank you for your guidance.

### POINT OF ORDER

#### ADJOURNMENT OF DEBATE ON AMENDMENT OF MOTION

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I beg to move under Standing Order No.51(3) that you defer putting the question to the following day on both the amendment and the main Motion. I have the Senate Majority team and also my colleagues from the other side. This is like a bipartisan Motion. If you followed my contribution, I believe that I spoke for you. The people of Murang'a County will also benefit from Ndakaini Dam and other sources of water---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator! Proceed and move the Motion that you are moving.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, with those few remarks, I beg to move that the Chair exercises its discretion to defer the putting of the question on both the amendment and the main Motion to tomorrow afternoon, at 3.00 p.m.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Members! Seeing that there is nobody else who is interested in debating the issue after the question has been proposed, and proceeding--- There are two issues here and I think that we must understand each other. The debate on the main Motion is still alive and there is still about 20 minutes or so on it. What has happened now is that an amendment to the Motion has been moved and we have not voted for it. Sen. Wetangula has made a request, under Standing Order No.51 (3), that we do not put the question now on the amendment only, and that we do it tomorrow. Since that is discretionary and quite obviously, we do not have the threshold that we need to have, and Senators have shown a lot of interest in this Motion, I will proceed to exercise my discretion under Standing Order No.51 (3). I order that the putting of the question on the amendment shall be tomorrow, not later than 3.00 p.m.

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. Considering that we still have time and knowing that we have an amendment, could we not continue debating the main Motion?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! If you look at the Standing Orders, amendments take precedence. It would be meaningless to continue with a debate which is proposed to be amended because then, we will be proceeding on the wrong premise.

### ADJOURNMENT

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, there being no other business, the House stands adjourned until tomorrow, Thursday, 23<sup>rd</sup> May, 2013, at 2.30 p.m.

The Senate rose at 5.15 p.m.