

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 1st April, 2015

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

[The Deputy Speaker (Sen. Kembi-Gitura) in the Chair]

PRAYERS

MESSAGE FROM THE NATIONAL ASSEMBLY

CONCURRENCE OF THE SENATE ON THE FOLLOWING BILLS:
THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL, NO. 43 OF 2013

THE CLIMATE CHANGE BILL
(NATIONAL ASSEMBLY BILL NO.1 OF 2014)

THE DIVISION OF REVENUE BILL
(NATIONAL ASSEMBLY BILL, NO.11 OF 2015)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), the Clerk has delivered to me the following Message from the National Assembly regarding the approval by the National Assembly of The Persons with Disability (Amendment) Bill (National Assembly Bill No. 43 of 2013), The Climate Change Bill (National Assembly Bill No.1 of 2014) and The Division of Revenue Bill (National Assembly Bill, No.11 of 2015).

Pursuant to the provisions of Standing Order Nos.41 and 42 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly:-

Whereas, The Climate Change Bill (National Assembly Bill, No.1 of 2014), The Persons with Disabilities (Amendment) Bill (National Assembly Bill, No.43 of 2013) and The Division of Revenue Bill (National Assembly Bill) No.11 of 2015 were published vide Kenya gazette supplements No.43 of 22nd November, 2013, No.3 of 20th January, 2014 and No.28 of 18th March, 2015 and passed by the National Assembly on 5th March, 11th March and 25th March, 2015 respectively;

Therefore, in accordance with provisions of Article 110(4) of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby forward the

said Bills to the Senate, the effect of which is to seek the concurrence of the Senate on the said Bills.

Hon. Senators, Standing Order No.148 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.129.

I now direct that the three Bills be read for a First Time at Orders No.8, 9 and 10 of today's Order Paper.

Let me also take this opportunity to draw your attention to the provisions of Standing Order No.163 that provides for the consideration of Division of Revenue Bill. It states:-

“The Senate shall proceed upon and conclude its consideration of a Division of Revenue Bill, not later than 10 days after the Bill has been introduced with a view to approving it with or without amendment.”

The Standing Committee on Finance, Commerce and Budget should note accordingly.

I thank you.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Deputy Speaker, Sir. I stand on a point of order to request the Chair's direction on the Communication or further guidance on an aspect of the Communication you have just issued.

First and foremost, I am happy and I know I speak for many of my colleagues, if not all of them, that the flow of Bills from the National Assembly to the Senate is at it should be. The fact that you have just read three Bills, which are now being submitted to us for concurrence, is a testimony to that.

Having said that, I have noted one part of your Communication where you said that according to the Standing Orders, the Division of Revenue Bill must be considered and dealt with, with or without amendments, in ten days. Considering the recess that is scheduled in our Calendar from tomorrow, would I be in order to request that you give us further guidance early enough so that we can know how to go about the legalities of the ten days as juxtaposed with the recess which is oncoming tomorrow.

The Deputy Speaker (Sen. Kembi-Gitura): Well, the Standing Orders are clear because it talks about ten days. So, we can conclude today or tomorrow because we are sitting the whole day. The Rules and Business Committee (RBC) may decide to extend the time of going to recess tomorrow evening. That is mainly administrative and we can consider it after the rise of the House.

Sen. (Dr.) Khalwale, do you have an issue?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I had an issue, but I think you have solved it. I wanted to support the Senate Majority Leader by suggesting that Easter is very important, especially to Members of this House who have families. Therefore, I would be requesting the RBC that you allow us to proceed to our Easter then consider recalling us for a Special Sitting once the Committee for Finance, Commerce and Budget is through with the deliberations on the Division of Revenue Bill.

The Deputy Speaker (Sen. Kembi-Gitura): That is why I said it is more administrative because we cannot consider it and finish today. We shall consider it at the rise of the House and see how best to proceed on that issue.

Is that satisfactory, Senate Majority Leader?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Next Order.

PETITION

PROTECTION OF KENYAN DOMESTIC WORKERS IN SAUDI ARABIA AND THE MIDDLE EAST

Sen. Mbura: Mr. Deputy Speaker, Sir, I thank you for this opportunity to speak for the voiceless through this Petition made to the Senate by family members, relatives and friends of Kenyan workers in Saudi Arabia, calling for the protection of Kenyan domestic workers in Saudi Arabia and the Middle East.

Mr. Deputy Speaker, Sir, the undersigned citizens of the Republic of Kenya comprising of family members, relatives and friends of Kenyan workers suffering in Saudi Arabia and concerned members of the public committed to nurturing and protecting the wellbeing of the individual Kenyan workers in Saudi Arabia, their families, communities and the nation wish to draw the attention of the Senate to the following.

- (i) That, given the lack of employment opportunities and the general state of the economy here in Kenya, many Kenyans, majority being from Mombasa County, leave the country to seek employment opportunities in Saudi Arabia.
- (ii) That, many such workers in Saudi Arabia are subjected to brutality and other abuses by the employers, including forced labour, denial of payments, denial of access to their passports and phones which are taken away on arrival, imprisonment without trial, rape, forced abortion and murder.
- (iii) That, those who commit the said crimes against Kenyan workers are never held accountable under the laws of the Kingdom of Saudi Arabia.
- (iv) That, all attempts, including petitioning the Ministry of Foreign Affairs and International Trade, to intervene and stop employment agents who take Kenyans to Saudi Arabia without securing their rights and interest and petitioning the Embassy of the Royal Kingdom of Saudi Arabia in Nairobi to intervene and solve some of the grievances above and/or to seek appropriate redress have failed.
- (v) That, the Government of Kenya should intervene as a matter of urgency to save these vulnerable Kenyans from further suffering.
- (vi) That, none of these issues raised in the Petition are pending in any court of law, constitutional or legal body.

Wherefore, your humble petitioners pray that the Senate intervenes and:-

- (i) Calls upon the national Government to reach out to the Government of the Royal Kingdom of Saudi Arabia and enter into a special employment contract hereinafter; the contract will secure and standardise the work environment for Kenyan workers in accord with the International Labour Organisation (ILO) Convention concerning decent work for domestic workers.
- (ii) Directs the national Government to audit the operation of recruitment agencies in Kenya and verify all employment contracts submitted to the Saudi Arabian recruitment offices.

- (iii) Call upon the Government of Kenya to request the Kingdom of Saudi Arabia, as the labour destination, to be responsible for the authenticity of the employment contracts, provide a twenty-four hour mechanism for domestic workers assistance and provide expedition settlement of labour contract violation cases.
 - (iv) Calls upon the Government of Kenya to request the Government of the Royal Kingdom of Saudi Arabia to repatriate the bodies of all dead Kenyans and all Kenyans who are languishing in Saudi Arabian prisons.
 - (v) Takes any other measure deemed fit, just and expedient in the circumstances to protect the rights and fundamental freedoms of Kenyan citizens working in Saudi Arabia, under the general rules of the Internal Law, International Treaties and Conventions and other instruments ratified by both Kenya and Saudi Arabia and the Constitution of the Republic of Kenya.
- Thank you, Mr. Deputy Speaker, Sir.

(Sen. Mbura laid the document on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kagwe, are you seeking the Floor on the Petition?

Sen. Kagwe: Yes, Mr. Deputy Speaker, Sir, I want to contribute to the Petition.

The Deputy Speaker (Sen. Kembi-Gitura): I will allow you a little time. However, I draw you to the provisions of Standing Order No.224 which provides that, “the total time on the Order “Petitions” shall not exceed thirty minutes.” So, I request you to just seek clarification. I also bring to your attention the Standing Order No.226 which provides that; “The Speaker may allow comments, observations or clarifications in relation to a Petition presented or reported and such total time shall not exceed thirty minutes.” So, it is very important that we observe that rule.

Sen. Kagwe, be brief.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I rise to congratulate Sen. Mbura for bringing the Petition to this House. I just want to point out that what is happening in Saudi Arabia is inhuman. We have had a couple of people even from my own county who have asked us to intervene through the Ministry of Foreign Affairs and International Trade to have them brought home because of the brutality that they are experiencing in Saudi Arabia. What they tell us about what goes on in Saudi Arabia is appalling. This includes mental anguish and mental abuse; where you are told that you were born to be a slave. Therefore, you are not even supposed to be a human being. The level of racism that goes on in Saudi Arabia vis-à-vis the domestic workers from this country beats any racism that has been practiced anywhere on God’s earth.

Mr. Deputy Speaker, Sir, in addition to the Petition that has been presented here, I urge the Ministry of Foreign Affairs and International Trade to act quickly and decisively on this matter.

Mr. Deputy Speaker, Sir, when we were in Abu Dhabi, not too long ago with my Committee Members, we were advised by the Abu Dhabi Embassy that it was desperately trying to get a lawyer stationed in the Abu Dhabi Embassy. This is because Kenyans are jailed because they do not even understand the language when they are taken to court. That was one thing. The other thing is that there should be some sort of clearance.

(Several Senators stood up at their places)

Mr. Deputy Speaker, Sir, you should intervene because there are about four Senators standing at the same time. This is against all possible Standing Orders.

The Deputy Speaker (Sen. Kembi-Gitura): Order! It is even more aggravated when it is done by the Senate Majority Leader.

Sen. Kagwe: Thank you very much, Mr. Deputy Speaker, Sir.

Our links with the Middle East are both religious and cultural. However, all that has been abused in the face of a blatant racism that occurs, particularly in the Kingdom of Saudi Arabia. It is time the Government created the Ministry of Diaspora. The Philippines have a ministry that deals with the diaspora and caters for them. Ours is only a small department in the Ministry of Foreign Affairs and International Trade. It is sad that millions of our people are suffering and being mistreated out there, but we do not have a Ministry to address their plight.

Mr. Deputy Speaker, Sir, I urge that this Petition be discussed thoroughly and action be taken. There is no point of claiming that we are an Independent nation when our people are being treated as slaves elsewhere.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Kagwe.

Sen. Obure, please, be brief.

Sen. Obure: Mr. Deputy Speaker, Sir, I will be very brief. First, I want to thank Sen. Mbura for executing this Petition very effectively and her concern on the plight of the suffering Kenyans. There are so many Kenyans in Saudi Arabia and other countries in the Middle East who are crying for help. They have been made to suffer inhuman treatment. I believe that this Senate has a responsibly to safeguard the welfare of Kenyans and guarantee their safety wherever they are in the world.

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! The level of consultations is too high. It would be fair if you could allow us to listen to one another. Consult, but in reasonably low tones.

Sen. Obure: Mr. Deputy Speaker, Sir, when the relevant Senate Committees embark on this investigation, I would like them to come out clearly on the position of the Ministry of Labour and Social Services, Ministry of Foreign Affairs and the Directorate of Immigration and Registration of Persons. They should be able to tell us what formal arrangements exist to assist Kenyans residing in foreign countries. What specific urgent action do they intend to take to provide relief to these Kenyans who are suffering abroad?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I want to thank Sen. Mbura for this Petition. The Government should deal with this matter comprehensively for two reasons. The first one is that there is nothing wrong with Kenyans working in Saudi Arabia or any other Middle East country. In fact, under normal circumstances, the Government should encourage young talented Kenyans to seek employment opportunities elsewhere because of the high level of unemployment in this country.

The second point is that we have been told today that Kenya has been singled out as a major centre for human trafficking. It, therefore, calls for the Government to ensure

that the Directorate of Immigration, Criminal Investigation Department and other agencies are up to their tasks. I recall that in the run up to the last generation elections one of the Presidential candidates was profiled as having an interest in securing employment opportunities for young Kenyans in Saudi Arabia. Could it be that some of the politicians – not necessarily in the Senate – are either agents of human trafficking or they promote---

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Khalwale, I do not want to rush you, but, please, you are seeking clarification. Please, appreciate that.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I was concluding by wondering aloud. Could it be that some of the politicians – not necessarily in this Senate – are actually promoters or have an interest in this vice? They should be investigated without any favouritism. I know that the Senator for Mandera has this kind of person in mind.

Sen. Karaba: Mr. Deputy Speaker, Sir, this Petition is long overdue. I would wish that whoever will be answering it, will tell us who these people who are recruiting students are. This is because they are doing so in the name of going out for further studies, to work in embassies and a lot of other lies. There seems to be a conduit which is operating here in Kenya and in those foreign countries. These cases involve mostly women. We also need to ask our embassies in those Arab countries whether they are aware of those cartels and whether they could complain to anybody about them.

The Deputy Speaker (Sen. Kembi-Gitura): There is a lot of interest in this issue. I appreciate that it is a very important issue, but we agreed to be very brief.

Sen. Muthama, one minute.

Sen. Muthama: Mr. Deputy Speaker, Sir, I wish to thank Sen. Mbura for bringing this Petition. History speaks volumes. Once upon a time, the black man was sold and purchased in the market like a goat or cow. What is happening is slave trade because those who send our children to Saudi Arabia are paid. The question is: Where is the Jubilee Government when this is happening? There is always news in the newspapers, radio and television stations; that our children are being raped and murdered in Saudi Arabia. The Jubilee Government instead keeps issuing passports to our children to travel to Saudi Arabia. Why can the Government not stop this? It should say that from today onwards, no Kenyan should--

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Muthama! Let us agree on one thing; and it is important. We will commit this Petition to a Committee and every Senator will have a right to go before it. What you are doing is debating. The Standing Orders say that the Speaker may allow comments, observations or clarifications. I appreciate that you are making comments and observations, but please, do not make it a debate.

Sen. Muthama: Mr. Deputy Speaker, Sir, I was just suggesting quick measures and steps that the Government can take now to stop this issue, once and for all. We do not want to see it again. Even before we debate this issue, the Government has got the authority to say that no more Kenyans should travel to Saudi Arabia.

Sen. Khaniri: Mr. Deputy Speaker, Sir, let me join my colleagues in thanking Sen. Mbura for bringing to the fore this very important issue. The first and foremost responsibility of any Government is to the security of its citizens within and even outside the borders.

This issue has been going on for many years. I have listened to so many questions in Parliament regarding this issue, but the Government seems to have given a deaf ear to this. I want to urge the Committee that will deal with this matter, to expedite it. What the Petition is asking is very simple; that the Government enters into a special contract with the Government of Saudi Arabia to ensure that our children who go to work there, are given good working conditions and environment. So, we want the Government also to rein in unscrupulous employment agents who sell our girls for as little as US\$600, which is Kshs54,000. It is such a shame. Action must be taken now.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji, I am thinking of sending this matter to your Committee. So, I do not know whether you would really want to comment now. But since you have sought the Floor, you can go ahead and make your comments.

Sen. Haji: Mr. Deputy Speaker, Sir, thank you very much for the observation that you have made. I will wait.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you.
Sen. Njoroge, one minute.

Sen. Njoroge: Mr. Deputy Speaker, Sir, I stand to hail Sen. Mbura for this Petition. Our Embassy in Saudi Arabia should have a desk where complaints can be lodged.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! You are saying what should happen. You should either seek a clarification or comment. What you are saying is information that you may find necessary to give to the Committee when this matter, finally, comes before it.

Sen. Njoroge: Mr. Deputy Speaker, Sir, urgent measures need to be taken so that we speed up the Petition and so that this matter is dealt with by this Senate.

Sen. Ong'era: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. First of all, I would like to congratulate my sister, Sen. Mbura, particularly on her staunch fight on the rights of the many domestic workers in Saudi Arabia. I am seeking further clarification in that Petition. I would like to know the number of the domestic workers who are in Saudi Arabia. I would like it to be profiled as follows:-

(i) How many women are there?

(ii) How many women have been violated and assaulted?

(iii) How many of the women are under the age of 18 years? We are told there is a growing number of minors who have gone to Saudi Arabia.

Finally,

(iv) What is the Embassy in Saudi Arabia doing, in regards to these cases of domestic violence?

The Deputy Speaker (Sen. Kembi-Gitura): Finally, Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Mr. Deputy Speaker, Sir, human trafficking has really become a big problem. We have not done enough in Kenya. I thank Sen. Mbura for bringing this Petition to the Floor. I want to add an important aspect that needs to come out as the Petition is being processed, and that is, what has been done to educate the young girls and women as they are leaving their countries to the countries where they are going in terms of what to expect and what to do when things go wrong. Even as we go ahead to make

these contracts, we need to have them as very specific. It is a choice for someone to go and work somewhere else, but they should live as they will live in their countries.

The Deputy Speaker (Sen.Kembi-Gitura): Thank you very much, hon. Senators. Those are very important observations. Now, this Petition shall be committed to the Committee on National Security and Foreign Relations. I say that with a lot of difficulties because it also quite obviously affects the Committee on Labour and Social Welfare, the Committee on Legal Affairs and Human Rights. However, I will refer it to the Committee on National Security and Foreign Relations.

I request that should they find it necessary to consult with the two other Committees because there are elements of labour and human rights involved in that matter, they are free to do so. Under the Standing Orders, Sen. Haji, you are supposed to give a report on this specific Petition within 60 days.

*(The Petition was referred to the Committee on
National Security and Foreign Relations)*

EMBEZZLEMENT OF FUNDS, FINANCIAL IMPROPRIETY
AND SKEWED EMPLOYMENT BY THE BOMET
COUNTY GOVERNMENT

Sen. (Prof.) Lesan: Mr. Deputy Speaker, Sir, I rise under Standing Order No. 220(1)(b) to present a Petition by the residents of Bomet County.

Petition made to the Senate Pursuant to Article 119 of the Constitution of Kenya and part 224 of the Senate Standing Orders by residents and inhabitants of Bomet County on the embezzlement of funds, financial impropriety and skewed employment by the Bomet County Government. I am presenting this on behalf of the residents of Bomet County.

The Petition states as follows:-

“We, the undersigned citizens of Republic of Kenya and duly registered voters in Bomet County, concerned over the embezzlement of public funds, fiscal impropriety and skewed employment in Bomet County wish to draw the attention of the Senate to the following:-

(1) That, the County Government of Bomet is engaging in fraudulent financial transactions contrary to the relevant provisions of the Constitution of Kenya, including the Public Finance Management Act, 2012, the County Government Act, 2012 and the Public Officers and Ethics Act.

(2) That, the Governor of Bomet County is using close relatives and proxy companies to award himself tenders and contracts in violation of the Public Procurement and Disposal Act as well as Articles 201 of the Constitution of Kenya.

These companies include:-

- a) Tundo Company Ltd;
- b) Erickson Company Ltd;
- c) Mulot Sunset Hardware Ltd;
- d) Wesmic Company Ltd;
- e) Rumic Company Ltd;
- f) Pulse Care System Company Ltd;

- g) Zugu Company Ltd;
- h) Jubilee Africa Company Ltd;
- i) Maraba Company Ltd; and
- j) Machii Company Ltd;

(3) That, public funds approved by the County Assembly during the 2013/2014 financial period have been lost and thus have not served the intended purpose.

Some of these allocations are:-

- a) Kshs10 million meant for persons with disabilities;
- b) Kshs61 million meant for the construction of County Assembly of Bomet premises; and
- c) Kshs8 million meant for Mau Forest evictees in Konoin Sub-County;

(4) That, the Governor of Bomet County is irregularly incurring expenditure of public funds for unbudgeted and unapproved projects, a case in point is the construction of Marengetit Secondary school in Chepalungu Sub-County, which has so far consumed approximately Kshs30 million to date.

(5) That, the County Public Service Board has failed to perform its duties diligently, pursuant to Articles 10 and 232 of the Constitution of Kenya, by practising favoritism and nepotism in the recruitment of staff, including the recruitment of the Chief Executive Officer (CEO), Rose Chepkirui, whose academic qualifications and integrity are in question.

(6) That, the Governor of Bomet County has failed to appear before the Senate Standing Committee on Finance, Commerce and Budget to respond to audit queries raised by the Auditor-General.

(7) That, all attempts have been made to remedy the situation, but relevant bodies have shown no interest, or have failed to solve the matter.

(8) That, no issues raised in this petition are pending in any court of law, Constitutional Commission, or other legal body.

Wherefore, your humble petitioners pray that the Senate-

(1) Urgently investigates the matters raised herein and prepare a report on improper financial dealings between the County Government of Bomet and the questionable companies mentioned in this Petition.

(2) Calls for documents and conducts an audit into the questionable expenditures by the Bomet County Government.

(3) Requests the Ethics and Anti-Corruption Commission (EACC) to investigate expenditure of public funds by the County Government of Bomet.

(4) Investigates the County Public Service Board for perpetuating recruitment exercises based on favouritism and nepotism.

(5) Makes recommendations aimed at protecting devolution and the taxpayer, and ensuring that any persons found to have received monies irregularly are surcharged.

It is dated on this date and attached is a list of the names of the citizens, their numbers, identity card numbers and their signatures.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Lesan, thank you for your Petition. I will commit this one to the Standing Committee on Finance, Commerce and Budget.

Sen. Billow, you have 60 days to give us a report on this Petition.

*(The Petition was referred to the Standing Committee
On Finance, Commerce and Budget)*

Sen. Billow: Mr. Deputy Speaker, Sir, the issue of corruption in county governments is a matter of major concern in this country. We have seen 12 governors named in the Report by the EACC. A short while ago, we have just heard that one of the governors has been arrested on similar charges. We are aware that in many counties there are concerns about accountability.

I have heard the Petition and we will follow it up. The Governor of Bomet County has been the subject of adverse mention even in the Report by EACC. Our Committee will work on that matter expeditiously, immediately we come back from recess, so that we can advise the petitioner and the sponsor of the matters that have been prayed for.

The Deputy Speaker (Sen. Kembi-Gitura): You have 60 days.

Sen. Billow: Yes.

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. Khaniri?

Sen. Khaniri: Mr. Deputy Speaker, Sir, I am not rising to challenge your decision. But listening to Sen. (Prof.) Lesan and the issues he raised about the County Government of Bomet, I think these are things that fall under the purview of the County Public Accounts and Investments Committee (CPAIC). I think the Petition should have been directed to this Committee.

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. Murkomen?

Sen. Murkomen: Mr. Deputy Speaker, Sir, as you make determination on the relevant Committee, the Committee or Committees that are going to deal with this issue--

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(Loud consultations)

Mr. Deputy Speaker, Sir, I cannot even listen to myself because of the loud consultations going on.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Order, Senators!

An hon. Senator: You are talking about sides!

The Deputy Speaker (Sen. Kembi-Gitura): I am not talking about sides; I am talking about the levels of consultations being too high.

Proceed, Sen. Murkomen.

Sen. Murkomen: Thank you, Mr. Deputy Speaker, Sir. The Committee or Committees, as you may determine, which will handle this matter should also help this House have a final determination on what to do with matters of corruption in the county and governors in part of their recommendations. As you may very well know, it has become an issue in this House that governors do not want to appear before the CPAIC. In fact, they do not want to appear before any Senate Committee and they resist court processes. They do not want even to appear before the EACC. They do not also want to go to the county assemblies.

Mr. Deputy Speaker, Sir, the Committee or Committees that will deal with this matter must also suggest ways of dealing with the runaway arrogance of Governors, including their looting of public funds.

(Applause)

That will be an important recommendation so that it can be applied in other counties whose petitions are not yet here. If we do not do so, we will have a problem.

Their recommendations should particularly also include a suggestion on how to deal with either amendments to the law or putting in place a policy framework that ensures that Governors who are being investigated have a determined period of time within which they should take leave or step aside so that those issues can be investigated without direct interference. I am saying this because if you look at the allegations we debated yesterday that are touching on the Governor of Bomet and other Governors, they are squarely within their office.

Take, for example, the complaints in Machakos County; some of them are related to the running of the Executive Office of the Governor itself. It cannot, therefore, be possible to investigate these allegations when the governors are sitting in Office. The Committee should come up with recommendations to this House on whether we should amend the law or what procedure we will put in place that will make it compulsory for any Governor being investigated to give way, just like the County Executive Committee (CEC) Member or a Deputy Governor will have to give way in the county government.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, the CPAIC is not a Standing Committee; it is a Sessional Committee. Standing Order No.227 talks about “relevant Standing Committee.” So, we cannot refer it to the CPAIC even if we wanted to because the Standing Orders do not allow us to do so. However, like we did in the case of Narok, I request the Standing Committee on Finance, Commerce and Budget to liaise closely with the CPAIC so that we can get a wholesome report on that issue.

Now, as pertains to Sen. Murkomen’s comments, because that was not a point of order, I would, again, request the Committee, in considering this Petition, to ensure that it looks at the HANSARD because both this Committee and the one dealing with the Petition by Sen. Emma Mburu should have the HANSARD as a primary document so that it can see exactly what it is supposed to do. So, that would be the order on that point and that is the end of Petitions.

Sen. ole Ntutu, do you have a point of order on the issue of Petitions?

FINANCIAL MIS-MANAGEMENT AND IRREGULARITIES
IN PROCUREMENT BY NAROK COUNTY GOVERNMENT

Sen. Ntutu: Thank you, Mr. Deputy Speaker, Sir. Last week, the Speaker ordered the Committee on Finance, Commerce and Budget to table the Report on the Petition of Narok---

The Deputy Speaker (Sen. Kembi-Gitura): Which Committee?

Sen. Ntutu: Mr. Deputy Speaker, Sir, the Committee on Finance, Commerce and Budget. They promised that they were going to table their findings on the Narok Petition.

Sen. Billow: Thank you, Mr. Deputy Speaker, Sir. It is true that we undertook to table the Report, either in its interim or final status, once we get the Auditor-General's report. This morning after breakfast, we had a meeting of the Committee and we engaged the Auditor-General on the matter. After a very serious request by the Auditor-General to be given one day to get some very useful data, which he really felt he should be given until tomorrow evening, we agreed to his request.

It is in the interest of this House that we should get a report that has the Auditor-General's report so that we do not end up in a situation where our Report, in its interim, may be subjected to ridicule. So, I am appealing to the hon. Senator, who is the sponsor and I did mention to him earlier that he gives us more time so that he can get something useful which he will also be satisfied with in terms of the facts that will be contained in the report.

The Deputy Speaker (Sen. Kembi-Gitura): So, do you have an indication of when you are going to give the report?

Sen. Billow: Yes, Mr. Deputy Speaker, Sir. We have proposed that we should table that report on the first day of the sitting of this House after the recess.

The Deputy Speaker (Sen. Kembi-Gitura): Are you okay with that, Sen. ole Ntutu?

Sen. Ntutu: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): We have waited for that report for some time now. It is of such importance that I think an extra few weeks will be good so that we get a proper and wholesome Report. Am I right?

Sen. Ntutu: You are right, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much, Sen. ole Ntutu.

Sen. (Dr.) Khalwale, is it on this point?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, you had allowed me to request for a Statement---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! Order! Before Sen. (Dr.) Khalwale makes his request, I have a short Communication to make.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MERU COUNTY ASSEMBLY

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I am pleased to acknowledge and welcome to the Senate this afternoon the Speaker and the Clerk of Meru County Assembly, who are seated in the Speaker's Gallery.

(Applause)

I request that when their names are called out, they stand up so that they may be acknowledged in our usual Senate tradition. Senator Joseph Kaderia Ariba---

An hon. Senator: It is the Speaker!

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, it is hon. Joseph Kaderia Ariba, the Speaker of Meru County Assembly and Mr. Julius K. Arithi, the Clerk of Meru County Assembly.

(Applause)

Hon. Senators, I take this opportunity, on behalf of the Senate and on my own behalf, to wish the Speaker and the Clerk of Meru County Assembly a happy and fruitful visit.

Thank you very much.

(Applause)

Sen. (Dr.) Khalwale, had I approved a Statement from you?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I have a request for a statement.

The Deputy Speaker (Sen. Kembi-Gitura): Yes, there is a request for a Statement, but I require an approved one. But where are we on the Order Paper? We are on Petitions, are we not? Yes, we are on Petitions and he is asking for an answer to a Petition. So, should we go to the next Order?

PAPERS LAID

Sen. Billow: Mr. Deputy Speaker, Sir, I beg to lay the following Papers on the Table of the Senate:-

REPORT ON OPERATIONS OF MAKUENI COUNTY

1. A Report of the Senate Standing Committee on Finance, Commerce and Budget on Operations of Makueni County Assembly.

REPORT ON THE STATUS OF FINANCIAL ALLOCATION TO COUNTIES FOR THE FINANCIAL YEAR 2015/2016 BY THE CRA

2. The Report of the Commission on Revenue Allocation (CRA) on the Recommended County Governments Budget Ceilings on the Recurrent Expenditures for the new structures for the financial year 2015/2016 pursuant to Section 107(2)(a) of the Public Finance Management (PFM) Act.

Thank you.

(Sen. Billow laid the documents on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, do you have a Paper to lay?

REPORT ON PETITION OF RESIDENTS OF OWINO OURU VILLAGE,
MOMBASA COUNTY

Sen. Kittony: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate:-

A Report of the Standing Committee on Health on the Petition by the Residents of Owino Ouru village, Mombasa County.

(Sen. Kittony laid the document on the Table)

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Thank you. Where is the Chairperson of the Joint Committee on Parliamentary Broadcasting and Library?

Sen. Moi, do you have a Paper to lay?

Where is the Chairperson of the Committee on Legal Affairs and Human Rights?

Proceed, Sen. Sang.

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

Sen. Sang: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate:-

A Report of the Standing Committee on Legal Affairs and Human Rights on the Public Service (Values and Principles) Bill (National Assembly Bill No. 29 of 2014)

Thank you.

(Sen. Sang laid the document on the Table)

PARLIAMENTARY SERVICE COMMISSION ANNUAL REPORT
FOR THE FINANCIAL YEAR 2013/2014

Sen. Leshore: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate:-

Parliamentary Service Commission Annual Report for the Financial Year 2013/2014.

Thank you.

(Sen. Leshore laid the document on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Next Order.

Sen. Moi: Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Moi, you are standing under which Order?

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Go on, Sen. Moi. However, next time, I will not allow it because I called you earlier and you were very engaged with your colleagues. Go on and lay your Paper.

Sen. Moi: Mr. Deputy Speaker, Sir, they were waiting to hear the good news. I apologize.

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

Sen. Moi: I beg to lay the following Paper on the Table of the Senate:-

A Report of the Standing Committee on Energy on the Fact Find Visit to Mui Basin, Kitui County on 3rd September, 2014.

Thank you.

(Sen. Moi laid the document on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): I think that is all with Papers.
Next Order!

NOTICE OF MOTION

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

Sen. Moi: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

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

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Moi.

Next order!

STATEMENTS

CIRCUMSTANCES SURROUNDING RESIGNATION OF PROF. JANE ONSONGO AS A
COMMISSIONER IN THE ETHICS AND ANTI-CORRUPTION COMMISSION

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. Pursuant to Senate Standing Order No.45(2)(b), I wish to seek a Statement from the Chairperson of the Standing Committee on Legal Affairs and Human Rights regarding the circumstances surrounding the resignation of Prof. Jane Onsongo as a Commissioner in the Ethics and Anti-Corruption Commission (EACC). In the Statement, the Chairperson should clarify the following:-

(1) State the reasons for the resignation of Prof. Onsongo.

(2) Explain the work dynamics in the Commission and specifically the working relationships between the Commissioners and the Secretariat, headed by the Chief Executive Officer (CEO).

(3) Explain measures being taken to ensure that the resignation of Prof. Onsongo, one of the Commissioners, will not undermine the work of the Commission and, specifically, the strict deadlines and timelines given by His Excellency the President to the Commission to conclude investigations on the corruption allegations.

(4) Clarify whether Prof. Onsongo was responding to external pressure to resign; and,

(5) Clarify whether the State Law Office and the Office of the President are interfering with the work of the Commission.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sang, when are you going to give that Statement?

Sen. Sang: Mr. Deputy Speaker, Sir, we are requesting for two weeks. In case we are going for recess, then that means I will issue it the first week when we resume Sittings from our recess.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, is that satisfactory?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I would like the Chair to indulge me. You realize that with the strict timelines involved in terms of the fight against corruption, if we do not sort out this matter before we go on recess tomorrow, it will count for nothing. So, just like the President is pushing the country to fight corruption, may the Chairperson push this Committee to bring an answer here tomorrow at 2.30 p.m.

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): I think it would be too ambitious to ask for it to come tomorrow because the Chairperson of the Committee has to seek the information and meet with them. Unless you want to have a half-baked answer, I do not think that is going to be possible.

Sen. Billow, do you have a point on this one?

Sen. Billow: Mr. Deputy Speaker, Sir, it is in the interest of the country that the Chairperson does whatever he has to do to get this information tomorrow in the morning tomorrow and bring it. This is because only this afternoon, there is a statement by the other two Commissioners who talked about being forced, being literally locked in rooms and what they said today is shocking. So, it is important that he has to do what he has to do so that we can get the response.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sang, is it possible for your Committee?

Sen. Billow: He is a young man; he can do it!

Sen. Sang: Mr. Deputy Speaker, Sir, I gave that request for two weeks knowing the working relations we have had with the Attorney General's Office and the difficulty that we sometimes have getting responses from them. Therefore, I do not think I want to give that commitment that by tomorrow morning or afternoon, we will have the Statement. We will try to expedite the process, but we really need two weeks. I am not

promising anything. However, if we get something between now and tomorrow afternoon, then we can try.

Sen. Okong'o: Mr. Deputy Speaker, Sir, on the same note, considering the dynamics now that the clock is ticking, bearing in mind the condition given by the President for investigations to be done within a time frame, which has now reduced to almost 52 days; considering that with the resignation of a key officer from the Commission, all the efforts by the President will be in peril, that is why we need the Chairperson to act as matter of urgency.

The Deputy Speaker (Sen. Kembi-Gitura): But even if you are given the reason why she resigned, how is it going to help in expediting the matter in 60 days. Even if you are told that she resigned for this reason, how will it help extend the days?

Proceed, Sen. Haji.

Sen. Haji: It is me who is on---

(Sen. Okong'o stood up in his place)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Haji!

Proceed, Sen. Okong'o.

Sen. Okong'o: On a point of order, Mr. Deputy Speaker, Sir. If we hold the position that the EACC is incapacitated, then Parliament, as a matter of urgency may reconsider foregoing the recess so as to deliberate on this matter.

The Deputy Speaker (Sen. Kembi-Gitura): All of you need to look at the statement sought by Sen. (Dr.) Khalwale, understand its import and how it is couched so that you can correlate it, if you can, because I do not think it will be easy. You should look into what Sen. (Dr.) Khalwale has asked for and how it will impact on the fight against corruption. Even if you are told that Prof. Onsongo was forced to resign, you will not just bring her back immediately and ask the Commission to proceed with work. We want to be practical. All of us here are either Chairpersons or Members of Committees and we know how difficult it is to get an answer when we want it.

Sen. Sang, if you can endeavor to get an answer, of whatever nature and bring it here tomorrow at 2.30 p.m. that will be very good for the House. I know that will not be easy.

Sen. Haji: On a point of order, Mr. Deputy Speaker, Sir. While Sen. (Dr.) Khalwale's concern is very valid, I think it will be difficult for the Chairman to get an answer tomorrow. In any case, since my brother is familiar with the Professor who has resigned, why can he not find out from her why she did so?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji, you are completely out of order. The statement sought will bring an answer that will be the property of the House. So, if even if Sen. Khalwale gets a private answer, we will still need to know, as a House. That will not be very helpful for him.

Sen. Billow: On a point of order, Mr. Deputy Speaker, Sir. One of the Commissioners, this afternoon, while giving a statement, clearly said that there were a dozen attempts to force their resignation and disbandment of the Commission by a clique which is out to support---

The Deputy Speaker (Sen. Kembi-Gitura): What document are you referring to?

Sen. Billow: The point I am raising is that the attempts to throw out these people is meant to subvert the statement by the President to act on this document. This Committee can summon these people and get information. The Committee has the powers in view of the urgency of this matter. Let them act.

The Deputy Speaker (Sen. Kembi-Gitura): I assume that all points of order are geared towards the urgency of the matter. I will not accept more points of order on this issue. Sen. Sang, you have heard what your colleagues have said about this position. It is incumbent upon you to see what you can do best. Tell us by tomorrow afternoon, 2.30 p.m., what you will have managed to do.

Having said that, I expect that if Sen. Sang will not be in a position to give an answer tomorrow morning, he will not be castigated by any Member because we are asking to do something which is next to impossible.

BILLS

First Readings

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.43 OF 2013)

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order, hon. Senators. Why is there so much restlessness?

(Order for First Reading read - Read the First Time and ordered to be referred to the Standing Committee on Labour and Social Welfare)

The Deputy Speaker (Sen. Kembi-Gitura): In the usual manner, we expect a response to be brought back within 30 days.

THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

(Order for First Reading read - Read the First Time and ordered to be referred to the Standing Committee on Lands and Natural Resources)

The Deputy Speaker (Sen. Kembi-Gitura): Likewise, the Committee has 30 days to bring a report back to the House.

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2015)

Order for First Reading read - Read the First Time and ordered to be referred to the Standing on Finance, Commerce and Budget)

The Deputy Speaker (Sen. Kembi-Gitura): The Bill must be debated and finalised within the next ten days. As I had directed, considering that we are going on recess tomorrow, further directions will be given on that position in tomorrow's sitting.

Second Reading

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

(Sen. (Prof.) Kindiki on 25.03.2015 - morning sitting)

(Resumption of Debate Interrupted on 25.03.2015 - afternoon sitting)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, this is coming for Division.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I seek your indulgence to find out whether it is in order to combine this order with similarly situated orders so that we conduct the divisions together.

The Deputy Speaker (Sen. Kembi-Gitura): Is that for Order No.11 and Order No.12; the two Bills?

Sen. Murkoben: On a point of order, Mr. Deputy Speaker, Sir. I know that it is within your province. However, is it in order for me to request you to ask Senators, after we have voted for the two Bills, to be available for Order No.14 since we need to vote? Most of the business there requires voting as it is in the Committee Stage. The issues there were suspended the last time we were discussing the Order. All of us should be here to deal with Order No.14.

Mr. Deputy Speaker, Sir, probably, after Order No.12, we should go to Order No.14 since it is more of voting. We should also request hon. Senators to be here tomorrow. Tomorrow we will make a lot of progress before we go for recess.

The Deputy Speaker (Sen. Kembi-Gitura): I cannot order Senators to sit in, both for the Division and the Committee of the Whole. Regarding your request, I will consider whether to bypass Order No.13 so that we can reorganize the Order Paper.

Hon. Senators, we have two Bills which are going for Division; Order No.11 and Order No.12. The request made by the Senate Majority Leader is a reasonable request and that is what we normally do so that we can have the Division Bell ring only once. That is what is going to happen. However, in the meantime, I would like the Clerk-at-the-Table to read Order No.12 so that we can then ring the Division Bill.

Second Reading

THE MINING BILL
(NATIONAL ASSEMBLY BILL NO. 8 OF 2014)

(Sen. (Prof.) Kindiki on 25.3.2015 – Afternoon Sitting)

(Resumption of Debate interrupted on 25.3.2015 – Afternoon Sitting)

The Bell will be rung only once and then we are going to vote on the two Bills. The Division Bell should be rung for five minutes.

(The Division Bell was rung)

Hon. Members, make sure you are logged in so that we can start voting on the two Bills. Serjeant-At-Arms, lock the doors and draw the Bar. We shall start voting on The National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013). Make sure you are logged in so that we start voting.

The Deputy Speaker (Sen. Kembi-Gitura): Order Members! Please, log in. You have one minute to vote.

(The Senators proceeded to vote)

The voting is now over. The assisted voters can come for assistance.

Since voting has taken place, there is going to be a print out. So, it will be difficult to vote again. So, we will have the print out. Members who are unable to vote, can be assisted at the Table, in the usual manner.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, we are now going to vote for Order No.12, The Mining Bill (National Assembly) Bill, and No.8 of 2014. Please, log in and vote for one minute.

Sen. Khaniri: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): I do not believe that there can be a point of order during Division. You have a mastery of Standing Orders; tell me which one you want to refer to.

Sen. Khaniri: On a point of order, Mr. Deputy Speaker, Sir. It is just a matter of procedure. We have breached Standing Order No.39(3) and 1(2). After we voted on the Order No.11 – The National Drought Management Authority Bill, I think the Clerk-at-the-Table should have called for the next Order before we take a vote on it.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Khaniri. I believe I even stood up and directed how the voting was going to be and both Orders were read, that is, Nos.11 and 12, sequentially.

Sen. Khaniri: My apologies, Mr. Deputy Speaker, Sir. I missed the second one. I stand guided.

DIVISION

ELECTRONIC VOTING

(Question that, The National Drought Management Authority Bill (National Assembly Bill No.42 of 2013) be now read a Second Time, put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Moi, Baringo County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. (Dr.) Zani, Kwale County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

NOES: Nil.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 32

NOES: Nil

ABSTENTIONS: Nil

So, the "Ayes" have it.

(Question carried by 32 votes to nil)

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

DIVISION

ELECTRONIC VOTING

(Question that, The Mining Bill (National Assembly Bill No.8 of 2014) be now read a Second Time, put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kittony, Trans-Nzoia County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Moi, Baringo County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira

County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. (Dr.) Zani, Kwale County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

NOES: Nil.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 34

NOES: Nil

ABSTENTIONS: Nil

So, the "Ayes" have it.

(Question carried by 34 votes to nil)

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

COMMUNICATION FROM THE CHAIR

RE-ORGANIZATION OF BUSINESS ON THE ORDER PAPER

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I am going to reorganise the Order Paper at the request of the Senate Majority Leader which is also in my discretion.

We have finished with Order No. 11 and 12. We will skip Order No. 13 and move to Order No.14(i) and (ii). I hope you understand why I seek your indulgence. This is because both the two Bills which are going to the Committee of the Whole have a constitutional deadline of 27th May, 2015. It is important that we finalise with them in good time. I will reorganise the Order Paper in that manner.

As I was requested by both the Senate Majority Leader and the Senate Minority Leader, I also request you Members, since we will be going on recess tomorrow, it is important that we also do our constitutional duty by beating deadlines; that stay on for the Committee of the Whole so that we vote on the Bills and pass them in good time today.

That is a request, but not an order. I make it to you on behalf of the two Leaders of the House; the Senate Majority Leader and the Senate Minority Leader.

Could the Bars be drawn and doors closed?

(The Bars were drawn and the doors closed)

The Deputy Speaker (Sen. Kembi-Gitura): Could we proceed to the Committee of the Whole

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]

IN THE COMMITTEE

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

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

The Temporary Chairperson (Sen. Murkomen): Order, hon. Senators. Order, the Senate Minority Leader! We are now in the Committee of the Whole.

Hon. Senators, I request all of you to take your seats. I am ordering all of you to sit down.

(Several Senators took up at their places)

What is it Sen. Orengo? Use the Dispatch Box.

(Sen. Orengo moved to the Dispatch Box)

Sen. Orengo: On a point of order, Mr. Temporary Chairman, Sir. The distinguished Senator for Nandi County, whom I really respect, especially when it comes to procedure and decorum, just crossed the Table here when he should go right up to the Bar. More importantly, I saw the Deputy Speaker - as the acting Speaker - just leave the Chair; he then went and sat as an ordinary Member. He should take with him the authority of that Chair outside the Chamber and come back as an ordinary Member.

The Temporary Chairperson (Sen. Murkomen): Under what Standing Order, Sen. Orengo?

Sen. Orengo: Mr. Temporary Chairman, this is a convention and a tradition. Because of the authority, he comes in in a procession and when he leaves he must also leave in a distinguished and with the retinue, if need be.

The Temporary Chairperson (Sen. Murkomen): I take it that he has corrected. Order, Sen. Sang. This is not a market place in Kapsabet.

(Laughter)

Of course, that is with a light note. Let us proceed.

(Sen. Kembi-Gitura withdrew from the Chamber)

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Chairman. Did you notice that as soon as your attention was being drawn to the misdemeanor by the Deputy Speaker, he majestically walked out? Could you allow me to name him for undermining you?

(Laughter)

Yes, it is a serious breach.

The Temporary Chairperson (Sen. Murkomen): Order, Sen. (Dr.) Khalwale. As he walked out, he looked at me in a very remorseful manner likely to suggest that he wanted to correct his misdemeanor. So, let us proceed.

Hon. Senators, we want to consider all the Clauses that do not have amendments first. If that is okay with you, then later, we will proceed with the ones that have amendments. Is that okay? I hope everybody is following.

(Sen. (Dr.) Khalwale stood up)

Sen. (Dr.) Khalwale that is a misdemeanor!

I am saying that let us consider Clauses that do not have amendments first. I request you, Senators, not to leave because we will vote in not more than 20 minutes. Please, do not go away; do not be far away from the Senate Chambers.

Let us proceed with the Public Service (Values and Principles) Bill (National Assembly Bill No. 29 of 2014).

*(Question, that Clauses 3, 4, 5, 6, 9, 10, 11, 12, 14, 16 and 17
be part of the Bill proposed)*

Hon. Senators, we will do the Division at the end.

Clause 7

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

That, Clause 7 of the Bill be amended by deleting Sub-Clause (6) and substituting thereof with the following new Sub-Clause.

(6) Every public institution shall -

- (a) develop standards for the responsive, prompt, effective, impartial and equitable provision of services;
- (b) facilitate the introduction of modern and innovative procedures, technologies and systems for the delivery of its services;
- (c) simplify its procedures and ease formalities related to access and delivery of its services;
- (d) ensure the adaptability of public services to the needs of the public;
- (e) ensure that its services are delivered closer to the users of the services;
- and,
- (f) develop mechanisms for monitoring and evaluating the effectiveness of public service delivery.

The Temporary Chairperson (Sen. Murkomen): That is okay. Is there any justification? Use the microphone.

Sen. Sang: Mr. Temporary Chairman, Sir, we made these amendments because we thought it is important that we should entrench values and principles within public institutions. We should give them the mandate to develop standards for responsive, prompt, effective, impartial and equitable provision of services, facilitate introduction of modern innovative procedures, simply the procedures and ensure that there is adaptability

of public services to the needs of the public. We want to ensure that their services are rendered closer to users and develop mechanisms for monitoring and evaluation of effectiveness of public service delivery.

Mr. Temporary Chairman, these are some of the issues that we thought are important to include in the Bill as a Committee.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Murkomen): Sen. Mutula Kilonzo Jnr., it does not need seconding, but you have made a request.

Sen. Mutula Kilonzo Jnr.: Just in support, Mr. Temporary Chairman, Sir.

The amendment in Clause 7, as stated by the Chair, was to have detailed criteria that we would use in so far as public institutions are concerned.

In Clause 8, we added the word “accountability” because the word “transparency” appears there. We just wanted it to be uniform with the Constitution. In the Constitution where the word “transparency” is, “accountability” follows. So, we wanted to marry the two.

In Clause 13, the amendment is to ensure that, first, there is a time---

The Temporary Chairperson (Sen. Murkomen): Order, Senator! We are in Clause 7 and not Clause 13. You are done with Clause 7.

I will put the Question at the end.

Clause 8

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

THAT Clause 8 of the Bill be amended in sub-clause (2) by inserting the words “and accountability” at the end of the sub-clause.

Mr. Temporary Chairperson, Sir, if you look at the provisions of the Constitution, the words “transparency and accountability” go in tandem. We thought that it is important for uniformity and conformity with the Constitution that we include the words “and accountability.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Murkomen): We will do the Division at the end.

Clause 13

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

THAT clause 13 of the Bill be amended-

(a) by inserting the following new sub-clauses immediately after sub-clause (3)-

(i) (3A) If after three months a service Commission has not investigated and determined a complaint, the officer responsible

for handling the complaint shall give the complainant satisfactory reasons, in writing, for noncompliance

(ii) (3B) Appropriate disciplinary action shall be taken against any officer who is found to have unreasonably delayed in handling a complaint made to the service Commission.

(b) by deleting sub-clause (4) and substituting therefor the following new clause-

(4) A person aggrieved by the decision of a service Commission may seek judicial redress.

Mr. Temporary Chairman, Sir, the purpose of rewarding public servants for their good work and values is not enough without providing a mechanism for persons who have not satisfied the criteria set in the Bill, to be put to task, hence, the reason we have proposed a complaint process mechanism. However, we did not want this to be the classic example of complaints in the country or public bodies staying for eternity, hence the three months, with a caveat that in the event that within three months that complaint has not been addressed, there shall be reasons for non-compliance in writing.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Murkomen): There being no interest, I will put the Question at the end.

Clause 15

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

THAT clause 15 of the Bill be amended-

(a) in sub-clause (1) by deleting the word “satisfactory” appearing immediately after the words ‘a public officer to be’ and substituting therefor the words “exemplary, outstanding or innovative”; and

(b) in paragraph (b) of sub-clause (2) by deleting the word “satisfactory” appearing immediately after the words ‘public officers who offer’ and substituting therefor the words ‘exemplary, outstanding or innovative’.

The intention of this amendment is to provide that only public officers who perform their duties exemplarily, outstandingly or in an innovative manner will be awarded or honoured, instead of just honouring somebody who does satisfactory work. Since satisfactory work is what one is employed to do, we really needed to raise the bar in terms of service delivery, to the level of exemplary, outstanding or innovative.

(Question of the amendment proposed)

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, the amendment in Clause 15 is meant to have an incentive for public servants who have excelled in various fields to be rewarded. We thought that the drafters of the original Section had included a subjective concept called “satisfaction” which in our view as the Committee on Legal Affairs and Human Rights, thought would be below what the intention of Article 232 of

the Constitution required. We have deleted the word “satisfactory” which in our view was subjective and put the word “exemplary.” We agree that, that view is correct, legal and objective.

Thank you.

The Temporary Chairperson (Sen. Murkomen): We will do the Division at the end.

(Question, that Clause 2, Title and Clause 1 be part of the Bill, proposed)

Since there are no amendments, we will do the Division at the end.

Hon. Senators, we are done with the amendments related to the Public Service Bill.

We will now proceed to The Environmental Management and Coordination (Amendment) Bill before we can do the Division.

THE ENVIRONMENTAL MANAGEMENT AND
COORDINATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.31 OF 2014)

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, just like we proceeded before, we will first deal with those that have no amendments and then go to the ones that have amendments.

(Question, that Clauses 3, 4, 5, 6, 7, 8, 11, 13, 14, 15, 16, 17, 18, 19, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79 and 80 be part of the Bill, proposed)

The Clauses as read have no amendments. We will do the Division at the end. Let us now proceed with the ones that have amendments.

Clause 9

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

THAT clause 9 of the Bill be amended in paragraph (a), in the proposed new paragraph (ba), by inserting the words “and their utilization and conservation”, immediately after the words “in Kenya”.

Mr. Temporary Chairperson, Sir, the amendment seeks to strengthen the clause as it includes auditing the utilization of natural resources as a function of the authority.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Murkomen): There being no interest, we will do the Division at the end.

Clause 10

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

THAT, Clause 10 of the Bill be amended in paragraph (d), by deleting the proposed new subsection (1) (f) and substituting therefor the following new subsection-

(1)(f) one person nominated by the Council of County Governors.

Mr. Temporary Chairperson, Sir, this is to ensure representation of the county governments.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, Division will be at the end.

Clause 12

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

THAT, Clause 12 of the Bill be amended in the marginal note of the proposed new Section 14 by deleting the word “Board” appearing immediately after the words “of the” and substituting therefor the word “Director-General and Directors”.

Mr. Temporary Chairman, Sir, the rationale of this is that the marginal note as drafted may be misconstrued as the remuneration envisaged is for the Director- General and the directors. The amendment therefore clarifies this.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, Division will be at the end.

Clause 20

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

THAT, Clause 20 of the Bill be deleted and substituted therefor with the following Clause-

20. The principal Act is amended in subsection (1) of section 31-

(a) by deleting the words “Public complaints Committee” wherever it appears and substituting therefor the words “National Environmental Complaints Committee”;

(b) by deleting the words “two members” appearing at the beginning paragraph(f) and substituting therefor the words “one member”; and

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

(f)

(g) one person who has demonstrated competence in environmental matters, nominated by the Council of County Governors.

Mr. Temporary Chairman, Sir, the rationale of the amendment is to re-number the existing Clause and add further provisions on representation of the county governments in the Complaints Committee.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, Division will be at the end.

Clause 23

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

THAT, Clause 23 of the Bill be amended in the proposed new Section 37-

(a) by deleting the word “three” appearing immediately after the words “shall, within” in subsection (1), and substituting therefor the word “two”; and

(b) by deleting the word “six” appearing immediately after the words “Plan every” in subsection (5), and substituting therefor the word “three”.

Mr. Temporary Chairman, Sir, the amendment seeks to reduce the number of years required to formulate and review the National Environment Action Plan.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Murkomen): What is it, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I have to take you back to Clause 20 (g) the new proposed subsection which states, “ One person who has demonstrated competence in environmental matters, nominated by the Council of County Governors”. Under the Inter- Governmental Relations Act, the body is called “Council of Governor”. So, I think we should delete the word “County”

The Temporary Chairperson (Sen. Murkomen): You have raised that with me, but for the record, before the Bill is transmitted it will be cleaned because it is just a typing error. However, it is good you have raised it for the record. The Chairperson has ordered that it be cleaned before it is transmitted.

Clause 25

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

THAT, Clause 25 of the Bill be amended in the proposed new Section 40-

(a) By deleting subsection (1) and substituting therefor the following new subsection-

(1) Every County Environment Committee shall within one year of the commencement of this Act and every three years thereafter, prepare a County Environment Action Plan in respect of the county for consideration and adoption by the County Assembly”; and

(b) By deleting the word “Cabinet Secretary” appearing immediately after the words “subsection (1) to the”, in subsection (3), and substituting therefor the word “Authority”.

Mr. Temporary Chairperson, Sir, this is to ensure representation of the county governments.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, there being no other interests, the Division will be at the end.

Clause 40

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

THAT, Clause 40 of the Bill be amended in the proposed new Section 56A, by deleting the words “the Authority” appearing at the beginning of the proposed new section and substituting therefor the word “Cabinet Secretary”

Mr. Temporary Chairman, Sir, the amendment vests the responsibility of making guidelines on the Cabinet Secretary and not the Authority. The Authority may be consulted.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, Division will be at the end.

(Question that the Second Schedule, Clause 2, Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Murkomen): There are no amendments. Therefore, Division will follow.

Hon. Senators, we are done with the Division of the two Bills. It is now time to vote for Division for all those Clauses. We will ring the Division Bell for five minutes. The Division Bell is for both Bills, so that we can carry out amendments on both Bills. I ordered that the Bell be rung for five minutes.

(The Division Bell was rung)

Close the door and draw the Bar and then we will go for the Division.

(The doors were closed and the Bar drawn)

Order, hon. Senators! Please, be seated. Order! Order! Now, we are going to Division for both Bills, the Public---

(Sen. Orengo consulted loudly)

Order, Sen. Orengo! Order! We are going to Division for both Bills; the Public Service Bill will be the first. So, we have a total of six divisions; three for the first Bill and three for the second Bill.

(Loud consultations)

Order! It is not in your province to determine how many divisions we will have; the Chair has determined. The more you co-operate, the better because nobody is going anywhere. So, you better co-operate.

(Laughter)

So, we have three divisions, starting with the clauses without amendments, clauses with amendments, the Second Schedule, Clause 2, Title and Clause 1, starting with the Public Service (Values and Principles) Bill (National Assembly Bill No.29 of 2014). So, let us have the first Division now, which is on the clauses without amendments in the Public Service (Values and Principles) Bill (National Assembly Bill No.29 of 2014) as indicated on the Board. You have 30 seconds to vote starting now. The manual voters should approach the Clerks-at-the-Table.

(Senators proceeded to vote)

Okay, the next voting will be on clauses with amendments as indicated.

(Sen. Bule spoke off record)

What is it, Sen. Bule? Just vote first.

Clauses 7, 8, 13 and 15

Your voting on the clauses with amendments for 30 seconds, starts now.

Order! Who has not voted? If you are voting manually, please, approach this desk. Where is Sen. Madzayo? Is there someone who has not voted, please? Sen. (Prof.) Lesan and Sen. Chelule, you have not voted. What kind of conversation were you having because the three of you have not voted?

Clause 2, Title and Clause 1

Order, hon. Senators! I put the Question, that Clause 2, the Title and Clause 1, be part of the Bill. Try to be fast in voting. Once again, we have 30 seconds to vote. Okay, start. Sen. (Prof.) Lesan, I hope you are voting. We have two people who have not voted; just approach the desk; Sen. Madzayo and Sen. G.G. Kariuki

Order, Sen. Sang! How can you just walk from one side of the House to the other? Order, Senators. The Standing Orders are very clear, during voting each one of you sits down silently, then you vote yes, no or abstain. But Sen. Sang, Sen. Orengo---

(Loud consultations)

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

DIVISION

ELECTRONIC VOTING

(Question that, Clauses 3,4,5,6,9,10,11,12,14,16 and 17 be part of the Bill put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Taita-Taveta County; Sen. Moi, Baringo County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; and Sen. Wamatangi, Kiambu County.

NOES: Nil.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 30

NOES: 0

ABSTENTIONS: Nil

So, the "Ayes" have it.

(Question carried by 30 votes to nil)

(Clauses 3, 4, 5,6,9,10,11,12,14,16 and 17 agreed to)

DIVISION

ELECTRONIC VOTING

(Question that, Clauses 7,8,13, and 15 as amended be part of the Bill put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. G.G. Kariuki, Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Taita-Taveta County; Sen. Moi, Baringo County; Sen. Mutula Kilonzo Jnr.; Makueni County; Sen. (Eng) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Munyes, Turkana County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; and Sen. Wamatangi, Kiambu County.

NOES: Nil.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 31

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 31 votes to nil)

(Clauses 7,8,13 and 15 as amended agreed to)

DIVISION

ELECTRONIC VOTING

(Question, that the Second Schedule, Clause 2, Title and Clause 1 be part of the Bill put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. G.G. Kariuki, Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Taita-Taveta County; Sen. Moi, Baringo County; Sen. Mutula Kilonzo Jnr.; Makueni County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki,

Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Okong'o, Nyamira County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; and Sen. Wamatangi, Kiambu County.

NOES: Nil.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 30

NOES: Nil

ABSTENTIONS: Nil

So, the "Ayes" have it.

(Question carried by 30 votes to nil)

(Second Schedule, Clause 2, Title and Clause 1 agreed to)

The Temporary Chairperson (Sen. Murkomen): There is someone who has not voted in both Bills and that is what we are trying to find out. However, let us proceed to the final Bill.

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

The first Division will be on clauses without amendments as displayed. You have 30 seconds to vote.

DIVISION

ELECTRONIC VOTING

*(Question, that Clauses 3,4,5,6,7,8,11,13-19,21,22,24,26-39,
41-80 be part of the Bill put and the Senate proceeded
to vote by county delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. G.G.Kariuki G.G., Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Taita-Taveta County; Sen. Moi, Baringo County; Sen. Mutula Kilonzo Jnr.; Makueni County; Sen. (Eng) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Munyes, Turkana County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira

County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; and Sen. Wamatangi, Kiambu County.

NOES: Nil.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 31

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 31 votes to nil)

(Clauses 3,4,5,6,7,8,11,13-19,21,22,24,26-39,41-80 agreed to)

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 9, 10, 12, 20, 23, 25 and 40 as amended be part of the Bill put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. G.G. Kariuki Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Taita-Taveta County; Sen. Moi, Baringo County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. (Eng) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Munyes, Turkana County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; and Sen. Wamatangi, Kiambu County.

NOES: Nil.

The Temporary Chairperson (Sen. Murkomen): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 31

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 31 votes to nil)

(Clauses 9, 10, 12,20,23,25 and 40 as amended agreed to)

DIVISION

ELECTRONIC VOTING

*(Question that the Second Schedule, Title and Clause 1
be part of the Bill put and the Senate proceeded
to vote by County Delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. G.G. Kariuki, Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County.

NOES: Nil.

AYES: 31

NOES: 0

ABSTENTIONS: Nil

The Speaker (Hon. Ethuro): The "Ayes" have it.

(Question carried by 31 votes to nil)

(Second Schedule, Title and Clause 1 agreed to)

The Temporary Chairman (Sen. Murkomen): Hon. Senators remember we have to report on two Divisions when the Speaker resumes the Chair. So, be patient for the last two Divisions.

The Senate Leader of Majority (Sen. (Prof.) Kindiki): Mr. Temporary Chairman, Sir, I beg to move that the Committee do report to the Senate its consideration of the Public Service (Values and Principles) Bill (National Assembly Bill No.29 of 2014) and its approval therefore with amendments.

(Question proposed)

(Question put and agreed to)

The Senate Leader of Majority (Sen. (Prof.) Kindiki): Mr. Temporary Chairperson, Sir, I beg to move that the Committee do report to the Senate its consideration of the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

**REPORTS, CONSIDERATION OF REPORTS
AND THIRD READINGS**

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

Sen. Orengo: On a point of order, Mr. Temporary Speaker, Sir. You can see Sen. Hassan crossing the Floor as though he is in Mwembe Tayari Market.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Hassan. You are completely out of order. Go to the Bar and bow to the Chair.

(Sen. Hassan walked to the Bar and bowed to the Chair)

The Temporary Speaker (Sen. (Dr.) Machage): That is good. Proceed to where you wanted to go to.

(Sen. Wamatangi and Sen. Hassan walked towards the exit door)

Order, hon. Members! Do not walk out of the Chamber. We have two Divisions to be done.

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

Sen. Murkomen: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Public Service (Values and Principles) Bill (National Assembly Bill No.29 of 2014) and approved the same with amendments.

The Senate Leader of Majority (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said Report.

Sen. Abdirahman seconded.

(Question proposed)

(Question put and agreed to)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the Public Service (Values and Principles) Bill (National Assembly Bill No.29 of 2014) be now read a Third Time.

Sen. Abdirahman seconded.

(Question proposed)

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. This Bill gave us an opportunity to raise very pertinent issues and we are hoping that the Jubilee Coalition Government that seems to lack ears this time has heard and that the points that we raised about the need for inclusivity for all Kenyans in Public Service will be practiced.

Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I will put the Question later. Let us move to the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014).

THE ENVIRONMENTAL MANAGEMENT AND
CORDINATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 31 OF 2014)

Sen. Murkomen: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014) and its approval thereof with amendments.

The Senate Leader of Majority (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

Sen. Abdirahman seconded.

(Question proposed)

(Question put and agreed to)

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

Sen. Abdirahman seconded.

(Question proposed)

The Temporary Speaker (Sen. (Dr.) Machage): The Division Bell will be rung for both Bills. Ring the Division Bell for only one minute.

(The Division Bell was rung)

(The door was closed and the Bar drawn)

DIVISION

ELECTRONIC VOTING

*(Question, that the Public Service (Values and Principles Bill)
(National Assembly Bill No. 29 of 2014) be now read a Third Time,
put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Moi, Baringo County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; and Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, the results of the Division are as follows:-

AYES: 26

NOES: 0

ABSTENTIONS: 0

(Question carried by 26 votes to nil)

(The Bill was accordingly read the Third Time and passed)

DIVISION

ELECTRONIC VOTING

*(Question, that Environmental Management and Coordination
(Amendment) Bill (National Assembly Bill No.31 of 2014)
be now read a Third Time, put and the Senate
proceeded to vote by County Delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. G.G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County;

Sen. (Dr.) Machage, Migori County; Sen. Moi, Baringo County; Sen. Munyes, Turkana County; Sen. Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County and Sen. Wetangula, Bungoma County.

NOES: Sen. Sang, Nandi County

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, the results are as follows

AYES: 26

NOES: 1

ABSTENTIONS: 0

(Question carried by 26 votes to 1)

(The Bill was accordingly read the Third Time and passed)

MOTION

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

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

THAT, this House adopts the Report of the Standing Committee on Finance, Commerce and Budget on the matter of Budget ceilings on Recurrent Expenditure for County Governments for the FY 2014/15, laid on the Table of the Senate on Thursday, 19th March, 2015.

Mr. Temporary Speaker, Sir, this is a very important matter because a number of county assemblies have raised concern about their cash flow and finances. At the same, the County Assemblies Forum (CAF) has appeared before our Senate Committee to express concern on the fact that this budget ceiling has impacted on them adversely and that a number of them have challenges of cash flow. They do not have adequate money to carry out their operations. As we speak, some county assemblies might be shutting down because they do not have adequate resources.

I want to remind Members, briefly, of the circumstances under which this matter of the ceilings came. When the county governments came into being, there was concern expressed by a number of assemblies on how exactly an assembly can get money from the county government or to be specific, how much money should be allocated to the county assemblies: Is there a formula or a percentage?

At that time, the county governments were new and there was no specific basis for determining how much money should go to an assembly. In the second year, the Commission on Revenue Allocation, (CRA) pursuant to the powers conferred on them in Article 216 of the Constitution, came up with a structured basis for determining how much money can go to an assembly. They based it on a simple criterion that within the resources that go to a county government, there is money specifically earmarked for the new administrative structures in counties. The new administrative structures included the

county executive which includes the governor, the deputy, the CECs, chief officers up to ward administrators. On the assembly side, we have the Speaker, MCAs and staff.

The other employees of the county government are functions that have been transferred within their own pay arrangements and so have their own votes. For this new structure, in allocating money between the national and the county governments, there is an amount of money that is determined on the basis of how much it costs to run the new structures. This amount was determined between the national and county governments in 2013/2014 and placed at Kshs30 billion. In the next financial year, this amount is expected to be Kshs45 billion. The Kshs30 billion is part of the Kshs226 billion that was allocated to county governments. That is the amount which has to be shared between the county assemblies and the county executive so that they can use it to finance their structures.

Therefore, CRA came up with a basis of determining how much of the Kshs30 billion will go to the county assemblies and how much will go to the county executive. They did this on the basis of the components of the structures of the county assembly. What are the components or the make-up of the county assemblies? We have the Speaker, MCAs and staff. We also have sitting allowances, salaries, operations and maintenance. So they determined how much it amounts to for a particular county. They did the same for the county executive. They took the cost of the salary of the governor, the deputy, the CECs including their allowances, operations and maintenance and put a cost on it.

Therefore, the Kshs30 billion was shared out, Kshs17 billion to the county assemblies and Kshs13 billion to the county executives in the 47 counties. That figure, therefore, is what we are now calling the budget ceilings of the county governments' recurrent expenditure. They prepared a booklet for each showing what goes to the assembly and what goes to the executive. They issued a circular in April, 2014 recommending a ceiling as required in Article 214.

Mr. Temporary Speaker, Sir, this, they believed and we also believed as a Committee of Finance, Commerce and Budget that it was necessary to set a ceiling on the budget between the two arms of Government so that there is a structured determination of how the allocation of the new administrative structures can be shared out. It was also felt necessary to minimize the wastage in county assemblies at that time. In the previous year when the ceilings were not there, some county assemblies asked for Kshs1 billion and others asked for more. It was an arbitrary request for money from the executive. There were some counties with huge amounts of money that ended up in frequent travels causing a public outcry in the country.

Mr. Temporary Speaker, Sir, our Committee felt that the proposed budget ceilings were appropriate in maintaining financial discipline in counties. Therefore, we went ahead and recommended and made amendment to the Public Financial Management Act. That amendment was brought here in the form of an amendment to the Act and passed.

In the County Allocation of Revenue Act, 2014, there was an amendment which was passed bringing in budget ceilings. The Controller of Budget went ahead and enforced the circular from CRA to ensure that only those counties that complied with those ceilings would access money and those who did not would not access their money and therefore their budgets would not be approved.

A number of counties complied but the county assemblies decided to go to court to challenge that circular. Hon. Senators will find the details of the case in their notes. There was a consent order that was filed in court by the three parties; the CRA, the Controller of Budget and the county assemblies. They entered a consent in court to allow them to withdraw up to 50 per cent of the money. That 50 per cent was based on the ceilings. They were allowed to withdraw 50 per cent for the first six months of this current financial year; from July to December. This was based on that ceiling. That is a consent they entered allowing counties to implement their respective budgets.

A further consent was entered in January to allow them to move from January to March. A further consent of 25 per cent was also entered so that the total consent of the certain amount of money they have been allowed to withdraw is up to 75 per cent of their budget which is based on the ceilings.

As we speak, the county assemblies---

(Sen. Billow spoke off record)

The Temporary Speaker (Sen. (Dr.) Machage): Please, use your microphone.

Sen. Billow: Mr. Temporary Speaker, Sir, the court case ended on 20th February, 2015. The ruling was very clear and we have explained specific prayers they asked for; for example, a declaration that the circular from the Commission on Revenue Allocation (CRA) was null and void and should be quashed. However, that was not granted but instead, it was dismissed. Another order that they asked for was that the Controller of Budget should approve and disburse to the assemblies' funds based on the budget approved by county assemblies. In other words, they did not want the Controller of Budget to subject their budgets which were passed in an assembly to a further review by the Controller of Budget. Again, the court did not grant that. Instead, it dismissed that order. In fact, the court upheld the fact that the Controller of Budget has powers to oversee the implementation of the budget based on the national laws passed in Parliament.

Mr. Temporary Speaker, Sir, as we speak, up to mid this month, 30 counties had complied with the ceilings. The remaining, 13 of them, were actually in discussion and I think by now they have agreed with the CRA, subject to amendments. They were going back to the CRA because the court ruled that the circular was lawfully issued. The only thing is that the figures in the circular were not binding. Therefore, they could go back and negotiate on the figures. That is what quite a number of them did. To the best of my knowledge, only three counties did not approach the CRA to discuss that.

Mr. Temporary Speaker, Sir, further to that, as a matter of fact, our Committee held a special meeting a couple of weeks ago in Naivasha. All the Chairpersons of Finance and Budget Committees of county assemblies and members of the executive of the County Assemblies Forum (CAF) were in attendance. We had the Controller of Budget and the CRA. In the meeting, we agreed and gave directions to the two institutions to allow county assemblies to access money. In fact, the Controller of Budget was very clear. He asked them to forward their revised Appropriations Act and they would access the money for the remaining quarter.

Therefore, Mr. Temporary Speaker, Sir, this is a matter that we have explained very clearly to the CAF. As late as yesterday, when we had a meeting in which both the

CAF and the CRA were in attendance, we made it very clear that the CRA should write to the County Executive Committee (CEC) members because the money does not come from the Controller of Budget or the CRA. It comes from the county government.

The challenge that we have in a number of counties is the poor relationship between county assemblies and county executives. We asked the CRA, even as late as yesterday, to direct the CECs in counties which have financial problems to release money. They have to find an appropriate reallocation of money from other votes to the county assemblies so as to allow county assemblies to proceed with their functions and the Controller of Budget will approve without any difficulty. This is because there is a process. Money has to be found and transferred from a particular account because people did their budgets based on the ceilings.

Mr. Temporary Speaker, Sir, when the court ordered, they went into a consent in court, that 75 per cent of the money that was released for nine months was supposed to be used for essential services as per the ceilings. Some county assemblies spent money on issues that were not in the budget that was approved by the Controller of Budget, based on the ceilings. However, they went into other expenditures. For example, where foreign travel was not approved, they went for a foreign travel. The money that was allocated to them for salaries and allowances was used for activities that were not approved in their respective budgets.

That is why they are having cash flow problems regarding salaries and allowances. That is why we have asked the Controller of Budget and the CRA to ensure that no county assembly has any financial crisis. In fact, yesterday after directing the CRA accordingly, we told members of the CAF that if any county assembly does not have money, they should contact us immediately so that we find out exactly where the problem is. This is because the CRA needs to direct respective assemblies to ensure that money is reallocated from other votes to county assemblies so that they continue to operate. That is the status at the present

Mr. Temporary Speaker, Sir, this Report was also based on a question that was raised by the Senator for Mombasa County. We have explained very clearly about constraints of ceilings that have been imposed on county assemblies. We have explained that the Controller of Budget had not refused to finance county assemblies. This was caused by the court case and they were required to oblige to the court's ruling in this regard.

Mr. Temporary Speaker, Sir, the other thing I want to mention is that this year, the situation would be absolutely different. The ceilings will be based on an amendment that we passed.

Another thing is that the total amount of money, as at mid this month, that has been released to county assemblies is Kshs12 billion out of the Kshs17billion. In fact, in the Report, you will find the table showing exactly how much money has been released to each county assembly and how much was in their budgets.

Mr. Temporary Speaker, Sir, our position in this document is that it is our considered view, after looking at the ruling of the court, that the court held that by virtue of Article 216, the CRA was well within its mandate to issue the circular. That is why the court said that the circular was lawfully issued. According to the CRA and the Controller of Budget, the court further held that the recommendation by the CRA – although not

binding on counties – should be given due consideration in the enactment of the budget for the reasons given.

The law is very clear. Where there is a deviation from a recommendation by the CRA, even with regards to deviation of revenue, the County Revenue Allocation Act requires that the reasons for deviations must be disclosed. In other words, as much as possible, the spirit of the Constitution and the law is that recommendations by the CRA must be given due consideration. That is important. If you do not comply with what is indicated, then you must give a reason. That is why even in the Division of Revenue Bill, there are a lot of memoranda explaining why there is a deviation from the recommendations by the Treasury and others.

According to our understanding, the Controller of Budget said that the situation has changed. In September last year, we passed an amendment to the Public Finance Management (PFM) Act. The amendment brought on board the recommendation which is now a legal requirement. The CRA has to recommend ceilings for both arms of Government. When we will be discussing, in the coming week the ceilings, you will appreciate that it is now binding as we go forward.

The recommendations that we have issued in this Report are very clear. In summary, we have said that the county governments should establish conflict resolution mechanisms and desist from encroaching on each other's constitutional mandate. This is where the challenge is. These are two arms of Government at the county level. But up to now, because of the fact that these are still new institutions, there is no respect by one arm of the other arm of Government for the other. There is no cooperation to the level that is expected, and this was expected in the Constitution.

This is why intergovernmental dispute resolution mechanism was envisaged in Article 189 of the Constitution. The Intergovernmental Relations Act was established so that people do not need to go to court, even if they go through all the mechanisms of dispute resolution. It is in this regard that we have advised the county assemblies that if they have those kinds of challenges, they should refer their disputes to the Senate, if they are not able to resolve them. This is because financial allocation is a negotiated process in every government and a budget is a political instrument that is negotiated.

Even at the national level, when Parliament requires money, it has no choice but to talk to the National Treasury. Anyone who has worked in the Government knows that there are sector ceilings. If they run out of the money that has been allocated to them midstream, they have to go and talk to the Treasury, so that they can get a supplementary allocation. Regarding that relationship of talking for established institutions like the national Government, the mechanisms are in place. Since the county governments are new, that mechanism of interaction, engagement and negotiation is still very difficult.

I think that is one of the challenges they face. So, in our first recommendation, we have said that as much as possible, the county governments have to talk to each other. Yesterday, we told the County Assemblies Forum that there are no two ways about it. The Members of the County Assemblies have to talk to the members of the executive to access money, because the resources are the same.

The second recommendation we made is that the Senate will, in due course, establish new guidelines on the approval of requisitions as well as new structures for accessing funds for the assemblies. We discussed this in Naivasha. We hope that by the time this House comes back from recess, the Commission on Revenue Allocation (CRA)

and the Controller of Budget, together with the national Treasury, will have advised this Senate on the fact that county assemblies can now access their money directly without going through the accounts of the county executive.

Once the requisition is approved – and that approval must be notified in writing to the assemblies so that every assembly knows how much requisition has been approved for them by the Controller of Budget – the Exchequer release should go directly to the operational accounts of the county assembly and not the county executive. This will ensure that there is independence and county assemblies do not have to queue at the county executive committee member for finance's office to beg for money. We have agreed on this with these institutions. We hope that for those counties that already have the Integrated Financial Management Information System (IFMIS) operational, that must be put into effect within the next few weeks.

Thirdly, we have set the ceilings on the Recurrent Expenditure for the financial year 2014/2015. We have recommended that the Controller of Budget in consultation with the CRA should release adequate funds to the county assemblies immediately. I think that we have made this very clear. We have told the CRA that it should be proactive in this matter. We do not want to see a situation where the CRA waits for a county assembly to come to it and tell them that they have run out of money. I think they need to write immediately to all those county executives where the assemblies have not negotiated for money to allow them to continue operating. This is a matter that we have directed and hope that they will comply.

We have also said that pursuant to the Public Finance Management Act, the Senate should develop guidelines for approval of the recommendation of the CRA in respect of the budget ceilings for 2015/2016. This is a point forward for the next financial year whose ceilings we tabled earlier today. Going forward, the Senate must approve those ceilings in this House. Therefore, our Committee will come up with some guidelines to advise the Members. In fact, in this regard, we have advised that we will need a meeting of all the Senators with CRA, so that they can take us through the ceilings.

If possible, we will try and organize that meeting in the presence of the members of the executive and County Assemblies Forum, so that once we discuss and agree, then there should be no challenge later from the county assemblies. Going forward, this now is a legal document that will form an attachment to the County Allocation of Revenue Act, so that it is not going to be subject to further amendments once your allocation has been approved.

I had mentioned earlier that the budget ceiling is sharing out of that Kshs30 billion between the two arms of government at the county level. We have focused a lot on the assemblies. What happens on the side of the executive? Out of that Kshs30 billion, Kshs17 billion went to the assemblies and Kshs13 to the executive. The challenge that we have is that although we have allocated that Kshs13 billion to cover the salaries, allowances, operations and maintenance of the county executive, from the governors up to the ward administrators, the county executive have access to funds from the rest of the entities within the executive. So, you can access money from the Ministry of Health, the Ministry of Agriculture or any other activities.

It becomes very difficult, therefore, to contemplate a situation where the county executive of a particular county is actually limited in its operational expenses, to the

amount of money that has been set in the ceiling for the executive. They are able to use money from other sources or marshal resources from the other entities. Therefore, we have told the Controller of Budget to do an audit and give us a report as to what extent the county executive is complying with the budget ceilings that have been set for them.

We do not want a situation where a county executive is given a ceiling of Kshs500 million, but they spend Kshs2 billion or Kshs3 billion, because they can draw the money from any of the other votes at will. That is the challenge that we have given the Controller of Budget and we gave them examples. We have seen county executives that even take Members of the County Assemblies (MCAs) on foreign trips. How does a governor finance expenditure of an MCA that he is taking on foreign trip on the account of the executive? There is no provision for him in that ceiling that has been set by the CRA. So, this is an area that requires to be tightened up.

I think it calls into question the whole issue of the accountability by the county executive. It shows clearly that in spite of the ceilings that have been set for them in those respective areas, the governors can have access to money from other sources. They starve other Ministries, so that they channel the money to their own administrative expenditure. This is what is happening and where all the money is getting lost. Otherwise, their Recurrent Expenditure should have been limited if they restrict themselves to the ceilings that have been set in terms of the new administrative structure. But because they do not do that, we have a situation where counties are spending 70 per cent of their money on recurrent expenditure. This is why it is very important at this time when there are a lot of concerns on integrity and corruption. We want to urge the governors that they will have themselves to blame if they start misusing resources that are meant for a particular purpose.

The law will catch up with them, they are the executives, they run an institution, and they must comply with the Appropriation Act and limit themselves to those specific items for which that money has been voted. We have seen very many of them in the reports that have been released by various institutions - the amount of wastage, inefficiencies, the implications, the double payments, the transfer and the stealing. I think it is very important that the governors appreciate that the concept of devolution is to send resources for the development of the counties. So that they do not wait for Nairobi, the concept of devolution is to send money to the counties so that there is efficient service delivery. You do not complain that you have no drugs because you are waiting for "Nairobi" to send you money. You do not complain that you do not have proper harvest in agriculture because the extension workers are not available.

Mr. Temporary Speaker, Sir, they are given money for service delivery and for development and that is where the money is supposed to go. At the same time, I want to challenge the county assemblies because that is the first call in terms of accountability. That is why we created those assemblies in every county; it is literally a Parliament; that is the meaning of an assembly, it is a Parliament. Those people are elected by the people of that particular county and the reason why they are elected is so that they can represent the interests of the residents of that county in holding that executive to account and enforce checks and balances which were introduced at the county level to ensure there is no mis-management of resources.

County assemblies have a challenge; the fact that there is widespread misappropriation, wastage and inefficiencies in the counties is an indictment of the county

assemblies. It is not that they do not have money, they have had money in 2013/2014, and there were no ceilings. Why did county governments end up with huge amounts of money that is being wasted? They have to learn to hold the executive to account and they have to learn not to be dependent on the executive for handouts. That is the challenge that we have. County assemblies that should have provided independent checks and balances to the executive have instead gone to bed with the executive.

We have a situation where there is no accountability, county governments do what they want and the executive does what they want. That is the reason why many Kenyans have expressed concerns on the resources that were going to the assemblies. If they had sufficient time, in terms of building their capacity because this is now the third year which is good enough for them to train the experts, to train and recruit the teams they want and carry out their function effectively.

Mr. Temporary Speaker, Sir, coming towards the end of my contribution on this matter, our Committee is convinced that it is necessary to determine on a very structured basis how much money goes to an assembly and how much goes to the new administrative structures for the county executive. This is what the budget ceilings are all about. It is not an attempt to starve the assemblies of money. In fact, it is the intention of this Committee to ensure that county assemblies get adequate money so that they can carry out their mandate. We give them more money so that they can save us more.

The argument is that because we do not give them enough, more money is being lost, our intention was to save. The total collective budgets of the county assemblies for 2014/2015 was Kshs26 billion. In the ceilings, they were given Kshs17billion, the intention here was to save Kshs9 billion that would have been used on travel and other expenses would have been retained at the counties so that they can use it for development. That was the intention and is still the intention.

However, this time in the first year, the basis for the determination of the ceiling was not very accurate because it was the first year, then I think they should appreciate that this year they have had an opportunity where they can give their inputs. They have had two days sitting with the Committee on Revenue Allocation (CRA), all the county clerks and the speakers, going through the figures that were proposed, so that later on they cannot say that they were just given some money arbitrarily. That arbitrariness has been removed. There is now a serious basis for determining how much money goes to an assembly. We want them to deliver. In this Report, we have made sure that no assembly should shut down for lack of resources.

So, Mr. Temporary Speaker, Sir, with those few remarks, I beg to move and ask Sen. Elachi, who I am certain is a Member of my Committee, to Second this Motion.

Sen. Elachi: Thank you, Mr. Temporary Speaker, Sir. I rise to second this Motion. While we talk about ceilings today, we also need to understand that the country is watching the institution of the Senate. We have had a lot of consultations since November when this issue was raised by the County Assemblies Forum.

Mr. Temporary Speaker, Sir, when we talk about the ceilings, I know that it is not a friendly subject but, indeed, it is also within the Constitution that we ensured that we have county assemblies. Therefore, it would be very unfortunate if we looked at the institutions of the county assemblies going down because of the issues of ceilings. I know that even in the newspapers today, one of the county assemblies is now closing shop. Bomet is also on the way and many others. Therefore, as the Senate Committee on

Finance, Commerce and Budget, we have had a lot of consultations with different institutions that are supposed to ensure that we have, indeed, clear mechanisms of how we can resolve the challenges we are facing, knowing very well that we have a lot of teething problems in devolution.

Mr. Temporary Speaker, Sir, I want to start by telling the county assemblies that as we support them, they should also know that they are the ones who created this same problem. Indeed, if they would have heeded the call of the Senators to look at some of their foreign travels, try to reduce some of them and ensure that they do some of these benchmarkings within the country, they would not be facing this problem. But at that time, it was very difficult to convince them until now, when they have realized that, indeed, when you spend your money without checks and balances, you will find yourselves in problems. That is where they are now.

Mr. Temporary Speaker, Sir, when we proposed the ceilings in this House, it was just a proposal. But the Commission for Revenue Allocation (CRA) reported back to us that they were able to save Kshs10 billion after putting on the ceilings, which is good. But then, when you look at that saving, then you ask the next question: When we were putting the ceilings, they were not just for the county assemblies; it was both for the Executive and the county assemblies to ensure that within their recurrent expenditures, they can put in a ceiling so that they have money for development. But we put a ceiling which affected the county assembly and created a County Executive Committee (CEC) member of finance who is now very powerful; and I am sorry to say that. That is the impunity we are facing in this country, where we have a character who, when he stands in front of people, he feels that he is in office and he can overrule others. He talks as if he has no regard or respect for that institution.

I always say that all these institutions, regardless of the individual who is in that institution and whether you like them or not, but it is an institution that we must ensure it has respect and people adhere to Chapter Six of the Constitution. Today when you look at the County Executive Committee Members (CECs) for Finance, they are the ones who are crippling the county assemblies.

The county assemblies make their budgets, present them early to the CEC in charge of finance and now it depends on the CEC for finance and the Governor on whether they will forward it to Nairobi or not. So, if they decide today - and I will not say names - but there is one CEC who said "after all, we looked at it and we decided that as a county, they do not deserve to have any resources." Therefore, it ends there.

As much as we thought we were assisting both governments; and the Constitution says that we have a county Government with the county assembly and the County Executive, we created another monster. Now the county assemblies are facing a very difficult task that even within their budgets, they cannot budget for their own development. Similarly, you go to a county and find that the Governor, as he continues with his development agenda, the county assembly is so lowly regarded because they have realized they can put ceilings on them and nobody can check what they are spending on their side.

Therefore, the oversight role of the 47 county assemblies is right now in turbulence. For them to survive, they have to work with their Governors. You find that sometimes, as we put ceilings for foreign travel, we are not asking the Governors about their entourage. We have not asked them about Members of County Assembly (MCAs)

they carry along and, therefore, by the time he or she is coming back, the county assembly, in terms of their checks and balances to the executive also comes into question, yet it is not their wish.

But when you also look at the recommendations that the Committee has given, these are some of the recommendations that can now guide the process so that we do not politicize the issue between the governors and the county assemblies. More importantly, within the mechanisms that we have proposed, the County Assembly has to look for a better way to work with their CECs. You find that in some counties, the CEC for finance and the County Assembly Clerk or the Speaker cannot sit on one table and decide on some of these issues. As much as the Commission of Revenue Allocation (CRA) will say “we would want to see you both; come and sit down so that we discuss this”, it is so difficult for them to discuss because they already have bad blood between them.

We thought that we were bringing in a devolved system that will create services, but we have ended up having a devolved system that has a lot of other emerging issues. For example, the Governor will appreciate when he has a CEC in charge of finance who is very close to him; who either was once an aide or somebody they have once worked with very closely and, therefore, he or she will listen to the Governor. Anyway, because the executive team comes in with the Governor, they will always have to respect the Governor more than the county assemblies. It is unfortunate that it is the same county assembly that gives them a job.

That is why even now, we have ended up having a lot of conflicts within those counties where people feel threatened. Some of them feel so threatened that either as a CEC, he or she must ensure that they adhere to their team or group. This is the group that has protected you, that has to do business in the county and many others. But I want to request the county assemblies - they went to court and now they have a final order from the court that their petition was neither here nor there and they must follow the law; which is true. Indeed, they must follow the law because, as the Senate, it is just a few months before we approve the new and better ceilings for them.

Mr. Temporary Speaker, Sir, the other issue that the Commission on Revenue Allocation (CRA) needs to do is to realise that every county is unique. We visited Wajir County recently and looked at the County Assembly and appreciated it. This is a county assembly where Members travel very rarely outside the country. They do most of their benchmarking within the Senate in this country. However, they are still strained in terms of funds.

As the CRA comes up with a formula for them, it has to assess county by county to know their needs. We realised that as much as they do not travel, if we are not careful, due to lack of funds, they will not also handle their legislative roles. While we are coming up with a new formula – we have the opportunity to approve the formula now so as to remove the burden from the CRA – we should ensure that if there are any issues that will arise; they will come up in the Senate and not within the Controller of Budget (COB) and CRA dockets.

We also request county assemblies to have tolerance. At times, they may disagree with the CRA. However, for the sake of the Members, then they have to sit at a table to discuss matters. No one is saying that one has to be a friend of so-and-so. You should have tolerance if you are a leader so as to work with others. They also have to align themselves with the new dispensation. You must be accountable for public resources.

I still want to thank the President. We are talking about ceilings. The President said that if we want our country to move forward, we must interrogate ourselves and see how we will change Kenya and not how we will build impunity by asking questions regarding why so-and-so did not step down while the other one is still in the office. You, as an individual, how do you stand up to show Kenyans that you have been elected to give services but not to chest thump?

County assemblies should learn through Makueni County. We kept on crying to Makueni County and telling them to have tolerance and to work together; they thought it was a joke. The Governor started the same process. He chest thumped because he did not have tolerance to come up with solutions to deal with the problems in his county. These people are still in office but the ordinary *mwananchi* is wondering how he can access services.

Let us adhere to the rules that we all passed. We decided to follow a new dispensation. I like the way the new Constitution has started “biting” us. Previously, people thought that the new Constitution would not bite. However, it will bite, change us and force us to come out of our comfort zones and appreciate every person, even those who come from the less privileged sections of our community like Kibera but pay tax. They all want to see transformation in their lives.

As we pass this law, Governors must also realise that they were elected to give services to their people. They must ensure that they respect the rule of law and the Public Finance Management (PFM) Act. The most important thing is to have tolerance; be able to sit at the table with the CRA and the CoB, not when the county is in bad shape, but before things get out of hand so as to come up with solutions. From there, you will also give time for consultations. No county should be closed because of issues related to resources.

They should not just complain about the ceilings but tell us how they have spent the resources they were given and we can sit down and agree on the way forward because with finances, you lobby. Even we in Government do some lobbying. You can go and discuss with the Treasury and lobby so that it is included in the Supplementary Budget. The same can apply to the county governments. If you decide not to have consultations and you want things to work your way, some of them will not work.

There are many ways of negotiating and finding solutions. I would like to call upon them to use the Senate to negotiate with the Treasury. They are welcome to the Senate any time they need guidance. They could also approach the CRA and negotiate with them. The Clerks and the CECs in charge of finance in the county assemblies should not imagine that they are governors of the Treasury but CECs for finance overseeing the budget that is passed by the county assemblies.

I support.

(Question proposed)

Sen. Ndiema: Mr. Temporary Speaker, Sir, ceilings are always not a very popular subject because they limit certain issues. We cannot, therefore, expect that the county governments will be pleased for being subjected to ceilings. The reality is that resources are always limited and there must be ceilings. Even at the national level, there have

always been ceilings in the various Ministries, Government agencies and even the overall Budget. It is not a new thing to put ceilings to expenditure by the county governments.

Mr. Temporary Speaker, Sir, perhaps the only area of argument is whether the ceilings for the county assemblies and the executive should be set outside. I think this is a matter that has been taken to court and I am happy that the court has given some direction. Notwithstanding that, if one reads Article 216 of the Constitution regarding the functions of the Commission on Revenue allocation, 216 (2) states:-

“The Commission shall also make recommendations on other matters concerning the financing of and financial management by county governments as required by this Constitution and national legislation”.

This, therefore, means that the National Parliament has the mandate to legislate on any matter concerning financial management at all levels of Government. I want to applaud this Report which says that the ceilings must be legislated by the Senate. However, it is important that in the spirit of consultation, inclusiveness and participation, the county governments and the relevant arms and departments are always consulted to ensure that their views and requirements are considered. When the first ceilings were set, perhaps, there was no adequate time for the county assemblies to be consulted. I believe that this time, there is ample time for them to be consulted.

Mr. Temporary Speaker, Sir, the ceilings were set for the county assemblies, but there are certain requirements, for instance, personal emoluments which must be catered for. We know that the size of counties vary from one county to the other. Some counties are bigger than others in terms of Members of the County Assemblies (MCAs). I hope that in setting the ceilings, the individual number of Senators will be taken into consideration, so that the MCAs in each county assembly are accorded equal rights or facilities as are being provided anywhere within the county.

Mr. Temporary Speaker, Sir, we have heard that some counties are now closing down because they do not have funds. We have also heard that even personal emoluments – salaries - are not there. I think that we should go a further step to ensure that there are also ceilings to ring-fence the item on personal emoluments, so that the first charge on any funding to the county is salaries. This will ensure that even if the allowances are not there, at least, salaries are guaranteed to be paid when due.

We have also heard from the Chairman that while we apply ceilings on the county assemblies, there are no similar ceilings in as far as the executive is concerned, particularly the administration in the new structures. I believe that this is now the right time for the executive to also exercise some discipline. In doing so, we must set parameters. I know that in many counties, the County Executive Committee (CEC) member in charge of finance is literally the controller of all finances of all Ministries within that county. We have CECs who are in charge of every department. Those CECs should be in charge of whatever allocations they have been given in the county budget. But as at now, the CECs for finance are controlling everything.

Mr. Temporary Speaker, Sir, I recently had the opportunity to visit a health facility within my county. Although they had a budget, they were not able to procure whatever they required because they were told that there was no money, yet according to the budget there is money and every month there are funds released by the budget department to them.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Sen. Ndiema, you will have seven minutes when the debate resumes.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, it is now 6.30 p.m. It is time for interruption of business of the Senate. The House, therefore, stands adjourned until tomorrow, Thursday, 2nd April, 2015, at 9.00 a.m.

The Senate rose at 6.30 p.m.