

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 22nd October 2015

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: There will be a Communication that will be issued before we go to Order No.8.

PETITIONS

MANDATORY VOTING BY KENYANS

Hon. Speaker: Hon. Members, this is Petition No.26 of 2015 and the conveyance relates to a petition regarding mandatory voter registration and compulsory voting by Kenyan citizens.

Hon. Members, Standing Order No.225(2)(b) requires that the Speaker reports to the House any petition other than that presented by a Member. I, therefore, wish to convey to the House that my office is in receipt of a petition signed by one David O. Gesicho, a resident of Kakamega County, regarding mandatory voter registration and compulsory voting by Kenyan citizens.

The petitioner has raised concern that there is general disinterest/apathy by a significant portion of eligible Kenyan population to participate in the elections of representatives at the national and county level as well as elections of the President and governors. This is demonstrated by the low voter registration and voter turnout during elections.

Hon. Members, the petitioner, therefore, prays that the National Assembly, through the Departmental Committee on Justice and Legal Affairs:-

- (i) enacts legislation to provide for mandatory registration of voters of all eligible Kenyan citizens; and,
- (ii) enacts legislation to obligate all registered voters to vote at general elections.

Hon. Members, pursuant to the provisions of Standing Order No.227(1), this petition stands committed to the Departmental Committee on Justice and Legal Affairs for consideration and the Committee is expected to engage the petitioner and report to the House within 60 days from the date hereof.

Thank you.

INSECURITY IN MERU COUNTY

Hon. (Ms.) Kajuju: Thank you, Hon. Speaker. This is a public petition on cases of insecurity, boundary conflict, cattle rustling, sexual abuse, loss of life and property.

I, the undersigned, on behalf of the residents of Meru County, draw the attention of the House to the following:-

- (i) THAT, the Borana, Samburu and Turkana communities reside in counties that border various constituencies of Meru County among other areas.
- (ii) THAT, in the past these communities have co-existed and lived in harmony.
- (iii) THAT, recently the said communities have engaged in cattle rustling, boundary conflicts and sexual abuse leading to a lot of tension, homeless families, destruction of property and loss of lives of innocent children, women and men.
- (iv) THAT, the residents of Meru County have suffered extreme loss and damage, pain and suffering, mental anguish and psychological torture due to these occurrences.
- (v) THAT, the residents of Meru County are living in fear due to the continued wanton destruction, killings, sexual harassment and gross violation of human, land and property rights with the hardest hit being women and children with some victims still in hospital with gunshot wounds.
- (vi) THAT, while there have been efforts to resolve the conflicts through alternative dispute resolution mechanisms, the agreements have been breached with impunity on all occasions.
- (vii) THAT, the issues in respect of which this petition is made are not pending before any court of law, constitutional or statutory body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Administration and National Security, intervenes in this matter and:-

- (i) Recommends that the Cabinet Secretary for Interior and Co-ordination of National Government puts in place mechanisms to ensure that boundary conflict between the respective constituencies and the neighbouring counties are resolved.
- (ii) Recommends compensation of families and other affected persons as a result of the gross violation of the human, land and property rights of the residents of Meru County.
- (iii) Recommends the enhancement of security and patrols along the said boundaries.

Your petitioners will ever pray.

Hon. Kubai Iringo: Thank you, Hon. Speaker, for giving me this opportunity to echo the sentiments of my sister, Hon. Kajuju, through that petition. Today is a sad day for the residents of Meru and especially the late students of Igembe. Last night we lost five residents through cattle rustlers, 15 animals were killed and 1,000 animals were stolen.

Hon. Speaker, this has been perennial in our area and our neighbours are doing this with impunity. I am sorry to say through investigations, some leaders from Isiolo County are involved in these heinous crimes. We have had meetings with our brothers and sisters from Isiolo and we have been sitting and discussing how we can live in peace and harmony but they have been acting with impunity. They have not been reciprocating what we have been asking for, demanding or requesting them.

Of late, every other day we have been losing animals and there is a day we took a petition to His Excellency the President. The losses since 2010 total about Kshs400 million in terms of

livestock stolen and over 300 people have been killed. We, the residents of Meru and precisely those who are neighbouring our brothers never steal anybody's cattle. They usually come for our cattle and that is why I remember one day in this august House, I said that they have made us Automatic Teller Machines (ATM). They have been collecting our animals. Once these animals are stolen and cross their border, it becomes impossible to return them. That is why we are wondering what the security arms of this country is doing when some communities are trying to make others poorer and poorer.

Hon. Speaker, during the dry season, these communities bring their animals to our area which borders them for grazing and water. We have water pans and boreholes which we have dug in our area and when they bring their animals for watering and grazing, we have meetings and we allow them to stay. However, when the rainy season comes and we tell them to drive their animals back, they refuse and instead say they can graze anywhere. Like a week ago, they grazed in somebody's farm and when he requested them to take the animal out, they shot him.

This petition should be looked into and the Government should intervene immediately because our neighbours have become a thorn in the flesh.

Thank you, Hon. Speaker.

Hon. Speaker: You know at a point like this you are expected to make comments and they must not exceed 20 minutes. So, if one Member speaks or debates for 10 minutes, then you have limited the opportunity for others to make comments. Just make comments. Remember the matter is now going to the Committee responsible. You can go and canvass most of the issues before that Committee.

Let me hear, Hon. Linturi.

Hon. Linturi: Thank you, Hon. Speaker. Before I make some comments on this, kindly allow me to pass my condolences to the families of those great people of Igembe North who lost their dear ones through this heinous attack.

Hon. Speaker, time has come when the Government must also demonstrate seriousness in keeping to the promise that they have a cardinal duty to safeguard and protect the lives and property of the Kenyan people. In 2012, I presided over a funeral of nine people at a place called Thera who were killed under such circumstances. In the last Parliament, when the Late Prof. Saitoti was the Minister for Security, we sat in a meeting at the Office of the President (OP) where we discussed this matter on how the Government would intervene in securing the lives and cattle of the people from Igembe. We came up with very elaborate plans. To date, nothing has happened.

The people and leaders then even requested for the arming of the residents. We sat down as Meru leaders and said no, we cannot take this responsibility of securing ourselves. It is the duty of the Governments to provide security to its citizens and we refused as the leaders of Meru to take arms to secure our cattle because we thought the Government would do it. So, today it is very sad to lose seven people.

In fact, Hon. Iringo must have had the numbers as early as in the morning. When I am seated here, the security team is on the ground. We have just come from the Office of the Inspector-General (IG) and I want to thank him profusely for having directed that an aircraft goes down there with police officers to track these animals.

I really call upon this Parliament to understand the situation that we are in. We are law abiding and need assistance. The Government should intervene because we do not want a

situation where we have no other options or explore other options that will not serve the interest of this country because we want to live cohesively with our neighbours.

Thank you, Hon. Speaker.

Hon. Maanzo: Thank you, Hon. Speaker for giving me an opportunity to comment on this petition. It is a sad occasion that such a thing has to happen in Kenya and there is still a problem between communities. There have been proposals in this House before that we have a system of tracking animals so that when animals are stolen, they can easily be tracked and that will stop people from stealing animals because we will easily find them.

There has also been a proposal in this House and is now pending as a Motion that we also track our guns so that we know who has a gun, where it is and what it is for. This is because if these cattle rustlers do not have guns then chances of attack will be reduced. If such guns are there and are well monitored, we will know what gun did what where and the crime will be brought down. So, when the matter goes to the Committee concerned with security or whichever Committee you will direct, we should look at the issue so that we reduce friction between communities in the country.

Thank you, Hon. Speaker.

Hon. A.B. Duale: Thank you, Hon. Speaker. The leaders of Meru have spoken. I want to speak for the neighbours whom I am one of them because, at least, the neighbours have to answer. The petition covered three areas namely sexual abuse, border conflict and insecurity. I think sexual conflict will go to the Committee on Labour and Social Welfare because that is the Committee that deals with social issues. Border conflict is more or less under the Independent Electoral and Boundaries Commission (IEBC) and the Committee that deals with IEBC is the Justice and Legal Affairs Committee. Then the other aspect of insecurity will go to the Committee on Administration and National Security. So, Hon. Speaker, we need your direction first.

Yes, I agree that the people of Isiolo and Meru County have lived together for many years but now we are seeing perennial conflicts. The Meru are our very good friends. They produce *Miraa* and we buy from them. So, we have a long economic history but I think this House is under obligation that the Boundary Commission as envisaged in the Constitution must be operationalised so that once and for all--- It is not only in Meru and Isiolo, there are serious boundary conflicts across the 47 counties. The biggest threat to national security internally in our country is boundaries between constituencies and counties. This is everywhere from the Coast region to Nyanza and Central. Hon. Olago Oluoch, I remember brought a petition here over a boundary dispute between him and another colleague on Maseno area. So, we need to operationalise it.

Finally, Hon. Maanzo talked about tracking of animals. Here, let me speak for the pastoralists. We do not believe in tracking of animals because the moment you start tacking animals it means you are going to put a chip in the animal and that again means you are going to count the number of camels or cows you own.

(Loud consultations)

If you allow me, I want the people from the fishing and coffee areas to listen to me. I am speaking only for the pastoralists – if you can protect me, Hon. Speaker.

In my community, one is not even allowed to know the number of animals in his livestock. Even me, I am not supposed to know how many camels I own. It is a taboo. So, we will not allow the tracking of animals. As far as I am concerned, I should say I own between 400 and 8000 camels and not 600 camels. It is a curse. So, please, we the pastoralists here do not even want to know the net wealth of a pastoralist. We do not count our animals.

On tracking of animals, I will appear before the Committee to say that we do not want it. You can track vehicles, fish in the sea or how many coffee trees you own but, please leave aside our camels, goats and sheep.

Hon. (Ms.) Kajuju: May I reply.

Hon. Speaker: There is no reply. Sorry, Hon. Kajuju. You cannot say you want to reply. Reply what? There is nothing.

Hon. Members, let me remind you that these comments are limited. They are limited to only 30 minutes which is the time for petitions.

(Hon. (Ms.) Kiptui raised her hand)

Hon. Grace Kiptui, you do not raise hands. We are not in a primary school. Have you not been here long enough or what is the problem?

I have some three minutes which I want to donate to Hon. Ali Rasso.

Hon. Dido: Thank you very much, Hon. Speaker. I rise to support the petition by Hon. Kajuju. What is happening between Isiolo and Meru counties is unacceptable to a great extent. It is a breakdown of law and order. It is inconceivable to find thousands of animals disappearing as if it is a needle in a haystack. It cannot happen.

The issue of boundary between Isiolo and Meru counties must be addressed, if the issue of insecurity is to be addressed. This is because it is the only boundary I find that has shifted. There is a roadblock mounted in different places every time I cross through Isiolo. It is one of the things that are really agitating to the wider public.

We should not trivialise what is contained in this petition. The citizenry of this country is looking up to us. With devolution, there appears to be a gray area as to who is responsible. Is it the County Commissioner (CC) or these governors? Everybody is pointing a finger at the other.

That petition is very important. Although this time it has been presented from Meru County, it is a problem that we are facing across this country.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order!

PAPERS LAID

Hon. (Dr.) Shaban: Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House today, Thursday, 22nd October 2015:-

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for the year ended 30th June, 2014 and the Certificate therein in respect of Chesumei Constituency, Matayos Constituency, Dadaab Constituency, Ijara Constituency, Awendo Constituency, Dagoretti South Constituency, Pokot South Constituency, Malindi Constituency, Matuga Constituency, Kaloleni Constituency, Marakwet West Constituency,

Kapenguria Constituency, Aldai Constituency, Keiyo South Constituency and Machakos Town Constituency.

Before I lay these documents on the Table, I wish to just remind Hon. Members the importance of going through their reports because it is important for us to know what questions have been raised.

Thank you very much.

Hon. Speaker: Hon. Members, everybody must be attentive when the report from their constituency is being tabled.

Hon. Midiwo: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Jakoyo Midiwo, what is out of order?

Hon. Midiwo: Hon. Speaker, nothing is really out of order. I just plead with you to allow the tabler of the reports, since they are from the Government and they concern the Constituencies Development Fund (CDF), to at least apprise the House on the status of the CDF for this current financial year. It was promised, but we have checked today and there is nothing.

(Applause)

Could we just know from our good Government if it is broke?

Hon. Speaker: Unfortunately, that is a confirmation that the Hon. Deputy Leader of the Minority Party was not in the House yesterday when that report was given by the Chairperson of the CDF Committee. I can confirm that he was not there and that is why he has forgotten. If you look at the HANSARD, you will see what was said in respect of what was not spent, what is forthcoming and the issues to do with the first quarter.

Hon. Members, before we move on, allow me to recognise students and pupils from the following institutions: Seated in the Speaker's Gallery are students from Moi Equator Girls Secondary School, Kieni East Constituency, Nyeri County and Bishop Collins Davis Secondary School from Mulot, Narok North Constituency, Narok County. At the Public Gallery we have Al-Hidaya Muslim Primary School, Saku Constituency, Marsabit County and finally, St. Stephen ACK Primary School from Likuyani Constituency, Kakamega County.

(Applause)

You are welcome to observe proceedings of the National Assembly.

Let us now have the Vice-Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives.

Hon. Mbiuki: Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today, Thursday, 22nd October 2015:-

The Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on the Petition by the stakeholders of the New Kenya Cooperative Creameries on the imminent privatisation of the New Kenya Cooperative Creameries.

Thank you, Hon. Speaker.

Hon. Speaker: Let us have Hon. Gikaria.

Hon. Gikaria: Thank you, Hon. Speaker. Just before I lay the following Papers, allow me to get your permission. There is one report that we were preparing this morning and it will be laid before the House today, at around 4.00 p.m. with your indulgence.

Hon. Speaker---

Hon. Speaker: You do not say what you want to do at 4.00 p.m. It is only with my leave.

Hon. Gikaria: Thanks a lot for your guidance.

Hon. Speaker: Yes.

Hon. Gikaria: I beg to lay the following Papers on the Table of the House today, Thursday, 22nd October 2015:-

The Report of the Departmental Committee on Administration and National Security on its consideration of:-

- (i) Petition by Hon. (Dr.) Susan Musyoka, M.P. on behalf of Mr. Raphael Kitivi, a former police officer on reinstatement and payment of his dues.
- (ii) Petition by Hon. Sammy Mwaita, M.P. on behalf of Mr. R.O. Abednego on alleged intimidation and victimisation through irregular transfer, posting by the Principal Secretary for Interior and Coordination of National Government.
- (iii) The Petition by Hon. Alois Lentoimaga MP, on behalf of the residents of Samburu Constituency regarding action towards recovery of illegal firearms within the North Rift region.

Thank you.

Hon. Speaker: Hon. Gikaria, the last one is the one you are going to table at 4.00 p.m. It is approved. The Report by the Departmental Committee on Finance, Planning and Trade has not yet been approved. So, it is not being tabled now. It could be tabled at some point later in the day.

Next Order!

STATEMENT

BUSINESS FOR THE WEEK COMMENCING
TUESDAY 27TH TO 29TH OCTOBER, 2015

Hon. A.B Duale: Thank you, Hon. Speaker. Pursuant to Standing Order No.44(2)(a), on behalf of the HBC, I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 27th October 2015:

The HBC met on Wednesday this week to prioritise the business of the House. On Tuesday next week, the House will consider in the Committee of the whole House the Presidential Memorandum on the Excise Duty Bill, 2015. Also prioritised for debate on that day is the Second Reading of the Petroleum (Exploration, Development and Production) Bill, 2015, should it not be concluded today.

Other Bills slated for debate next week include the Protection of Traditional Knowledge and Traditional Cultural Expression Bill, 2015; the Forest Conservation and Management Bill, 2015; the Statute Law (Miscellaneous Amendments) Bill No.57/2015; the Health Bill, 2015 and the Roads Bill, 2015.

On Wednesday morning, we have scheduled for consideration the following Bills by Private Members; the Access to Information Bill, 2015; the Community Land Bill, 2015 which has a constitutional deadline; the Land Laws Bill, 2015 and the Fiscal Planning Bill, 2015.

The following Cabinet Secretaries (CS) are scheduled to appear before Committees on Tuesday, 27th October 2015:-

The CS for Environment and Natural Resources will appear before the Committee on Environment and Natural Resources at 10.00 a.m. to answer questions from Hon. Wilberforce Ottichilo, MP, Hon. Hassan Dukicha, MP, Hon. Christopher Nakulei and Hon. James Mwangi Gakuya, MP.

Two, the CS for Education, Research and Technology will appear before the Committee on Education, Science and Technology at 10.00 a.m. to answer questions from Hon. John Waluke, MP, Hon. James Kimaru Bett, MP, Hon. Aghostinho Neto, MP, Hon. Mosses Lessonet, MP, Hon. Shukra Hussein Gure, MP and Hon. Alice Wahome, MP.

The CS for the National Treasury will appear before the Committee on Finance, Planning and Trade at 11.15 a.m. to answer questions from Hon. Benson Mutura, MP, Hon. Timothy Wanyonyi, MP, Hon. (Dr.) Wilbur Ottichilo, MP and Hon. Abdulswamad Sherrif Nassir, MP.

Hon. Speaker, Members will note that we have increased the number of questions directed to CS's. This is meant to combine related questions and to clear the huge backlog that the Clerk's Office has received. The CS's are also requested to table answers before committees if time does not allow them to offer verbal reply. I wish to remind Members that we are scheduled to proceed for a short recess next week. It is, therefore, important that we conclude with the business scheduled before then.

Finally, the HBC will reconvene on Tuesday 27th October 2015 at the rise of the House to consider business for the rest of the week.

I now wish to lay the statement on the Table of the House. Thank you.

(Hon. A. B. Duale laid the document on the Table)

Hon. Speaker: Very well. let me also further take this opportunity to recognise and welcome to the National Assembly members of the Committee on Implementation from Bungoma County Assembly and their staff who are seated in the Speaker's Gallery. Welcome to Parliament.

Hon. Washiali is not in the House?

COMMUNICATION FROM THE CHAIR

PROCESSING OF SPECIAL MOTIONS

Hon. Speaker: Hon. Members, I had indicated that I have this Communication to make but I wanted to do it at this point. This Communication relates to processing of Special Motions under Articles 145, 150(2), 152(6) and 251 of the Constitution

Hon. Members, as you may be aware, instances have arisen in the recent past when this House has been made to grapple with procedural issues relating to Special Motions arising out of the provisions of Article 145 of the Constitution (Removal of the President by impeachment) and Article 152(6) of the Constitution (Removal of Cabinet Secretary) and Article 251(1) (Removal from office of a member of a constitutional commission).

In this regard, it is, therefore, necessary to revisit and clarify the procedures outlined in our Standing Orders as relates to the processing of these Special Motions.

First, this clarification is necessary in light of recent pronouncements by the courts of law which have brought new interpretation dimensions. My office has also recently received

inquiries from various actors including but not limited to the Kenya National Commission on Human Rights (KNCHR) on the threshold required in impeachment processes of State officers.

Secondly, this Communication is necessitated by the emerging incidences where Members who had initially signed the Special Motions request to withdraw their signatures before the Motions are considered by the House thereby, raising questions on whether a Member can withdraw a signature once appended on a list.

Hon. Members, before revisiting the procedures relating to the impeachment processes, it is paramount that we examine the provisions in the Constitution relating to the impeachment process.

The provisions relating to the removal of the President by impeachment are found in Article 145 of the Constitution, which provides as follows:-

- 145 (1) A member of the National Assembly, supported by at least a third of all the members, may move a motion for the impeachment of the President—
- (a) on the ground of a gross violation of a provision of this Constitution or of any other law;
 - (b) where there are serious reasons for believing that the President has committed a crime under national or international law; or
 - (c) for gross misconduct.

By virtue of Article 150(2) of the Constitution, this provision also applies to the impeachment of the Deputy President. The provisions for the removal of a Cabinet Secretary from office are found in Article 152(6) of the Constitution which reads as follows:-

- “A Member of the National Assembly, supported by at least one quarter of all the Members of the Assembly, may propose a Motion requiring the President to dismiss a Cabinet Secretary-
- (a) on the ground of a gross violation of a provision of this Constitution or of any other law;
 - (b) where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or
 - (c) for gross misconduct.”

The removal from office of members of constitutional commissions or the holders of independent offices is governed by Article 251 of the Constitution which provides as follows:-

- “(1) A member of a commission (other than an ex-officio member) or the holder of an independent office, may be removed from office only for-
- (a) serious violation of this Constitution or any other law including a contravention of Chapter Six;
 - (b) gross misconduct, whether in the performance of the member’s or office holder’s functions or otherwise.”

Hon. Members, from a close reading of the Constitution, the grounds for the removal of the President, the Deputy President, Cabinet Secretaries and members of constitutional commissions and holders of independent offices are largely similar. Further, other than the difference in the threshold required to support the motion, the constitutional provisions relating to the removal of the President, Deputy President and the Cabinet Secretary are similar in wording.

The American impeachment process, a constitutional based remedy, provides a legislative mechanism for investigating and trying allegations of some forms of serious conduct

on the part of the President, the Vice-President and ‘civil officers of the United States’ of America (USA). The fundamental issue that each House of Parliament contemplating impeachment of a State officer must confront is whether the conduct in question falls within the constitutional parameters. In the USA, the thresholds are of such nature as ‘treason, bribes or other high crimes and misdemeanours.’

In most jurisdictions where the legislatures have been given powers of removal, the impeachment process is a complex and cumbersome mechanism. The thresholds are not precisely defined in the Constitution itself and, therefore, it is the responsibility of the House to determine grounds and particulars based on their respective constitutions. In most cases, the constitutional framework is skeletal, providing minimum guidance as to the nature of the proceedings and leaving the void to be filled, to a great extent, by the House rules, procedures and precedents.

Moving on to our National Assembly procedures for impeachment of the President, the Deputy President and Cabinet Secretaries, Part XIV of our Standing Orders clearly outline the procedure for removal from the respective state offices. In particular, the procedure for the removal of the President by impeachment is outlined under Standing Order No.64, which provides as follows:-

“(1) Before giving notice of Motion under Article 145(1) of the Constitution, the Member shall deliver to the Clerk a copy of the proposed Motion in writing-

- (a) stating the grounds and particulars in terms of Article 145(1) of the Constitution upon which the proposed motion is made;
- (b) signed by the Member; and,
- (c) signed in support by at least a third of all Members.”

By virtue of Standing Order No.65, this procedure also applies for the impeachment of the Deputy President.

The procedure of removal of a Cabinet Secretary by the House is outlined under Standing Order No.66, which states as follows:-

“(1) Before giving notice of motion under Article 152(6) of the Constitution, the Member shall deliver to the Clerk a copy of the proposed motion in writing-

- (a) stating the grounds and particulars in terms of Article 152(6) of the Constitution upon which the proposed Motion is made;
- (b) signed by the Member; and,
- (c) signed in support by at least one quarter of all the Members of the Assembly.”

Hon. Members, having looked at the relevant provisions of the Constitution and the Standing Orders, it is now important to look at the recent developments in the courts of law in relation to impeachment processes. You will recall that Articles 145, 150(2), 152(6) and 251(2)(a)(b) of the Constitution require, as a ground for removal from office of the President, the Deputy President, Cabinet Secretary or member of a constitutional commission or independent office, a threshold of either gross violation of the Constitution or other laws or gross misconduct. Under Article 75(3) of the Constitution, a person who has been dismissed or otherwise removed from office for misconduct in a state office is disqualified from holding any other state office.

At the preliminary level, the *Concise Oxford English Dictionary* defines the word “gross” as “blatantly wrong or unacceptable”. The High Court of Kenya, in the case of *Martin Nyaga Wambora and 30 others versus the County Assembly of Embu and four others* (Embu Constitutional Petition Nos.7 and 8 of 2014) considered the issue of the required threshold for determining what amounts to a gross violation of the Constitution or a gross misconduct in impeachment processes. The High Court, under paragraphs 232, 233, 234, 235 and 236 of its judgement, made precedent setting pronouncements, of which I seek your indulgence to read out the relevant pronouncements as follows:-

“232. It has been argued that the gross violation attributed to Mr. Wambora had not been demonstrated. Gross violation of the Constitution or any other law is a ground for removal from office as provided under Article 181(1)(a). The question that then arises is how you qualify gross violation. Who is the one to assess that the allegations amount to gross violation?”

“233. In stating what amounts to gross violation, the Supreme Court of Nigeria in *Hon. Muiywa Inakoju and others versus Hon. Abraham Adeolu Adeleke* held that-

- (i) The word “gross” in the sub-section does not bear its meaning of aggregate income. It rather means generally in the context ‘atrocious, colossal, deplorable, disgusting, dreadful, enormous, gigantic, grave, heinous, outrageous, odious and shocking’. All these words express some extreme negative conduct. Therefore, a misconduct which is the opposite of the above cannot constitute gross misconduct. Whether a conduct is gross or not will depend on the matter as exposed by the facts. It cannot be determined in a vacuum but in relation to the facts of the case and the law policing the facts.
- (ii) Gross misconduct is defined as-
 - (a) A grave violation or breach of the provisions of the Constitution; and
 - (b) A misconduct of such nature as amounts in the opinion of the House of Assembly to gross misconduct.
- (iii) By the definition, it is not every violation or breach of the Constitution that can lead to the removal of a governor or deputy governor. Only a grave violation or breach of the Constitution can lead to the removal of a governor or deputy governor. “Grave” in the context does not mean an excavation in earth in which a dead body is buried, rather it means, in my view, serious, substantial, and weighty.

234. With regard to what amounts to gross violation, the Court in *Wambora 1* observed at paragraph 253:-

“...whatever is alleged against a governor must:

- (a) Be serious, substantial and weighty.
- (b) There must be a nexus between the governor and the alleged gross violations of the Constitution or any other written law.
- (c) The charges framed against the governor and the particulars thereof must disclose a gross violation of the Constitution or any other written law.

(d) The charges as framed must state with degree of precision the Article(s) or even sub-Article(s) of the Constitution or the provisions of any other written law that have been alleged to be grossly violated.”

235. On appeal, the Court of Appeal sitting at Nyeri as regards what amounts to gross violation, held at paragraph 46 in Wambora 1 Appeals that:

“We reiterate that what constitutes gross violation of the Constitution is to be determined on a case by case basis. Gross violation of the Constitution includes violation of the values and principles enshrined under Article 10 of the Constitution and violation of Chapter Six (Leadership and Integrity) of the Constitution; or intentional and/or persistent violation of any Article of the Constitution; or intentional and blatant or persistent violation of the provisions of any other law. The rationale for this definition is that the values and principles embodied in the Constitution provide the bedrock and foundation of Kenya’s constitutional system and under Article 10(1) these values bind all state organs, state officers, public officers and all persons. We hasten to state that the facts that prove gross violation as defined above must be proved before the relevant constitutional organ. Examples of the constitutional Articles whose violation amounts to gross violation include:

- i. Chapter 1 on the sovereignty of the people and supremacy of the Constitution more specifically Articles 1, 2, and 3(2) of the Constitution.
- ii. Chapter 2 - Article 4 that establishes Kenya as a sovereign multi-party Republic & Article 6 that establishes devolution and access to services.
- iii. Article 10 on national values and principles of good governance.
- iv. Chapter 4 on the Bill of Rights.
- v. Chapter 6 - Articles 73 to 78 on leadership and integrity.
- vi. Chapter 12 - Article 201 on principles of public finance.
- vii. Chapter 13 - Article 232 on values and principles of public service.
- viii. Chapter 14 - Article 238 on principles of national security.
- ix. Article 259(11) on advice and recommendation.
- x. Any conduct that comes within the definition of the offence of treason in the Penal Code (Cap.63 of the Laws of Kenya).”

236. A body exercising its quasi-judicial function should be very careful in deciding what amounts to gross violation or misconduct. The Supreme Court of Nigeria in the case of Hon. Muiywa Inakoju already referred to above, warned that:

“It is not a lawful or legitimate exercise of the constitutional function in Section 188 for a House of Assembly to remove a governor or a deputy governor to achieve a political purpose or one of organised vendetta clearly outside gross misconduct under the section. Section 188 cannot be invoked merely because the House does not like the face or look of the governor or deputy governor in a particular moment or the governor or deputy governor refused to respond with a

generous smile to the Legislature qua House on a parliamentary or courtesy visit to the holder of the office.

(Laughter)

The point I am struggling to make out of this light statement on a playful side is that section 188 is a very strong political weapon at the disposal of the House which must be used only in appropriate cases of serious wrong doing on the part of the governor or deputy governor, which is tantamount to gross misconduct within the meaning of subsection (11). Section 188 is not a weapon available to the Legislature to police a governor or deputy governor in every wrong doing. A governor or deputy governor, as a human being, cannot always be right and he cannot claim to be right always. That explains why Section 188 talks about gross misconduct. Accordingly, where misconduct is not gross, the Section 188 weapon of removal is not available to the House of Assembly.”

Hon. Members, indeed, as stated earlier, I have also recently received inquiries on the need to amend the Standing Orders to clearly identify the issues of threshold in impeachment processes. However, although the Standing Orders have not addressed the issues of threshold, in light of the foregoing judicial pronouncements by the courts of law, the rule of law requires that the Special Motions brought before the House under Articles 145, 150(2), 152(6) and 251 of the Constitution, should comply with the foregoing thresholds established by the courts of law. In any event, in our particular case, the courts of law under Article 165 have the power to interpret the provisions of the Constitution.

It is important for the House to note that the question of determining what constitutes gross violation of the Constitution or gross misconduct is one that clings and hangs on the impeachable authority of the House and is excisable in two instances under the Standing Orders; firstly, at the point of the approval of the Motion for impeachment or dismissal and secondly, at the point of investigations conducted by the relevant select committee.

In the first instance, Standing Order 47(3)(b) and (e) requires the Speaker to take into account constitutional and evidential requirements while determining the admissibility or otherwise of a Motion including all Special Motions brought under Part XIII of the Standing Orders, which relates to Special Motions.

In this respect, the Speaker would in effect be examining whether the Special Motion as presented contains and meets the threshold of the grounds envisaged under the relevant Article of the Constitution. This implies that a duty is imposed on the Speaker to examine the facts as stated in the Special Motion amounting to alleged gross violation of the Constitution or gross misconduct and to this extent the Speaker must be guided by the interpretation precedent set by the courts of law.

In the second instance, Article 145(3) vests the impeachment authority of Parliament in respect of the President and the Deputy President on a Select Committee of the Senate which is mandated to investigate and report to the Senate, whether it finds the allegations against the President or Deputy President substantiated and in this case whether the grounds stated amount to gross violation of the Constitution or any other law and gross misconduct. Subsequently, if the allegations are substantiated, the Senate is mandated pursuant to Article 145(6)(b) to take a vote to approve the resolution requiring the President or Deputy President to be impeached.

Similarly, Article 152(7) of the Constitution vests the impeachment authority of a Cabinet Secretary on the National Assembly on a Select Committee which is mandated to investigate and report to the House whether it finds the allegations against the CS substantiated and in this case whether the grounds stated amount to gross violation of the Constitution or any other law and gross misconduct.

Subsequently, if the allegations are substantiated, the House is mandated pursuant to Article 152(9)(b) to take a vote to approve the resolution requiring the CS to be dismissed. This implies that a duty is imposed on the Special Committees of the Houses to examine and interrogate the facts as stated in the Special Motion amounting to alleged gross violation of the Constitution or gross misconduct and to this extent, the findings of the Special Committees must be guided by the interpretation precedent set by the courts of law.

Hon. Members, in respect of removal from office of members of constitutional commissions and independent offices, Article 251(6) of the Constitution places the obligation to make the finding on the thresholds at the second instance on an independent tribunal constituted in accordance with that Article.

The second issue which has precipitated this communication is the emerging incidences where some Members who had initially signed a Special Motion request, through letters to the Speaker, to withdraw their signatures in support of the Special Motion, before the Motion is considered by the House as provided for under the Standing Orders.

Both Standing Orders 64 and 66(1) require the Hon. Member to deliver to the Clerk a copy of the proposed Motion in writing before giving the Notice of Motion to impeach or dismiss, as may be the case under the relevant Article of the Constitution.

The copy of the proposed Motion given to the Clerk is required to be accompanied by the proposed Motion in writing signed by the Member, and signed in support by at least one-quarter of all the Members. For instance, Standing Order 66 provides as follows:-

“(1) Before giving notice of Motion under Article 152(6) of the Constitution, the Member shall deliver to the Clerk a copy of the proposed Motion in writing-

- (a) stating the grounds and particulars in terms of Article 152(6) of the Constitution upon which the proposed Motion is made.
- (b) signed by the Member, and
- (c) signed in support by at least one quarter of all the Members of the Assembly.

(2) A Motion under paragraph (1) shall be disposed of in accordance with Standing Order 56(2).

(3) An Order Paper on which the Motion under paragraph (1) is listed shall set out-

- (a) the grounds and particulars upon which the proposed Motion is made;
- (b) the name of the Member sponsoring the Motion; and,
- (c) the names of the Members in support of the Motion.

(4) Any signature appended to the list as provided under paragraph (3) shall not be withdrawn.”

Hon. Members, Standing Order 66(4) provides that any signature appended to the list as provided for under paragraph (3) shall not be withdrawn. On the other hand, paragraph (3) refers

to the list of signatures set out in the Order Paper and not the one attached to the copy of the Notice of Motion sent to the Clerk under paragraph (1).

Hon. Members, the Standing Orders are, therefore, clear that a Member can withdraw a signature given in support of a Special Motion before the Special Motion is listed in the Order Paper. However, this creates unpredictability and uncertainty on the impeachment processes and may also create room for abuse of the impeachment processes where Hon. Members may be unduly influenced or coerced to withdraw signatures that were earlier appended on a list.

(Applause)

Looking at comparable jurisdictions, the need for predictability and certainty in the conduct of the business of the House and the need to adopt a practice that resonates with the practice in other jurisdictions cannot be overstated. Indeed, the practice in the Parliament of Uganda is such that once signatures have been appended to a Special Motion, the signatures cannot be withdrawn. Their rules of procedure provide for a sequence of events as follows:-

1. A Member who is desirous of moving a motion for the removal of the President shall notify the Clerk in writing of his or her intention, citing the grounds for the proposed motion and giving detailed particulars supporting such ground.
2. The Clerk shall, within three days, upon receipt of the notice of a motion, notify by causing the notice, grounds and particulars supporting the proposed Motion to be pinned on Hon. Members' notice board.
3. The Clerk shall on the date and time of pinning the notice of motion on the Members' notice board also cause to be prepared and deposited with the Sergeant-at-Arms, for a period of ten working days, a list of all Members of Parliament with an open space against each name for purposes of appending of signatures which list shall be titled "SIGNATURES IN SUPPORT OF THE NOTICE OF MOTION TO REMOVE THE PRESIDENT."
4. After one third of the Members have appended their signatures on the list signifying support for the proposed motion, the Sergeant-At-Arms shall, with immediate effect, forward the list to the Clerk who shall not later than twenty four hours transmit the notice of motion, the grounds and all supporting particulars and signatures to the Speaker.
5. Any signature appended to the notice shall not be withdrawn.
6. If within the ten days referred to in sub-rule (5), less than a third of the Members have appended their signatures on the same, the notice shall lapse.

Hon. Members, it is important to remind Members that the office of the Clerk is a technical office which assists members with the processing of various technical instruments that form the various business of the House. It is, therefore, important for members to consult with this office before embarking on the process of collecting signatures as is the process in Uganda.

Hon. Members, in light of my foregoing exposition and in conclusion thereof, I now direct as follows:-

1. That all Special Motions brought before the House under Articles 145, 150(2), 152(6) and 251 of the Constitution should comply with thresholds established by the courts of law as to what constitutes gross violation of the Constitution or gross misconduct under the Constitution.

2. That the question of determining what constitutes gross violation of the Constitution or gross misconduct is one that clings and hangs on the impeachable authority of the House and is exercisable in two instances – firstly, at the point of the approval of the Special Motion for impeachment or dismissal by the Speaker pursuant to Standing Order 47(3)(b) and (e) which requires the Speaker to be satisfied of the constitutional and evidential propriety of the Special Motions. Secondly, at the point of investigations conducted by the relevant Select Committee or tribunal, pursuant to the provisions of the relevant Article of the Constitution.
3. That in order to facilitate the Speaker and the House to comply with the obligation under paragraph 2, averments made in the Special Motions should be accompanied by the necessary evidence including annexures and sworn testimonies in respect of the allegation as may be necessary.
4. That Members wishing to bring a Special Motion within the confines of Articles 145, 150(2) and 152(6) of the Constitution should get drafting assistance from the office of the Clerk before embarking on the collection of signatures and before submitting to the Clerk a copy of the proposed Motion as contemplated in the Standing Orders.
5. That for purposes of certainty and good order in the conduct of the business of the House and notwithstanding the provisions of Standing Order 66(4), no withdrawal of signatures will in future be permitted where the Member has sought assistance from the Office of the Clerk as indicated above, prior to embarking on the collection of signatures.
6. That the Procedure and House Rules Committee re-looks at the Standing Orders with a view to incorporating the best practices on the issues raised in this Communication during the next review.

Hon. A.B. Duale: Hon. Speaker, this is a very important communication. I am sure that generations to come will use Articles 145, 150, 156(6) and 251.

Hon. Speaker, you have raised serious issues among them is where you are somewhere in a bar and you find a list of members being sought; you go for a prayer rally and you find a member collecting signatures; and, you are walking inside Nakumatt Supermarket and you find your colleague who asks you to go to the parking lot to sign for him. This is now very clear.

On the flipside, you will find members who have signed and out of nowhere, you find them writing letters to you withdrawing.

I am sure that the framers of the Constitution knew what they were doing when they provided Articles 145, 150, 156(6) and 251 of the Constitution. They wanted to give a threshold so that in the event of gross violation of the Constitution or abuse of office, the National Assembly and, to some extent, the Senate have leeway in using the impeachment option.

Hon. Speaker, you have brought sanity to the use of these Articles that never again will we find people telling us to sign Motions without any content. Before a Member signs, it is only fair to give the Member something to read with clear conscience and be convinced as a legislator that the said State officer has violated the Constitution. The culture here is that Members sign before they even see the contents of the Motion. As legislators, we are here to protect the integrity of this House and the provisions of the Constitution.

The sanity that you have brought is that the Serjeant-at-Arms will take charge and ensure that the list is kept at the reception. The particulars of the Motion should also be provided so that across the political divide if you read the issues being raised with clear conscience and you agree with them, then you can append your signature and then come and argue your case in the hope of

protecting the Constitution. This is a very good ruling that will not only help this Parliament but will also help future Parliaments. The stage is set with the roadmap you have given and the Powers and Privileges Committee will do the necessary.

The only clarification I would like to seek is this: What about the purported impeachments we hear about in the media? Do they follow this ruling from today or they will not be subject to the directions you have given this afternoon? If so, then we expect those colleagues of ours to follow the new directions and put the list and grounds in the open so that even some of us who might not be on the other side can read and see the facts and make a conscious decision other than being put under duress. Does your Communication affect any pending impeachment Motions in the Office of the Clerk? If so, how do those impeachment Motions live with your new communication? I need some clarification on that.

Hon. Speaker: Hon. Midiwo.

Hon. Midiwo: I thank you, Hon. Speaker for delivering your ruling with a lot of curiosity. It seems curious what this ruling is supposed to do. First of all, listening to this ruling, it will have a lot of effect on how legislators and legislative assemblies across this country behave. It seems to me that the governors particularly will take a lot of comfort by drawing and quoting this ruling.

I support the fact that you have said you want to create order. I like that because if we are going to impeach the President or a constitutional office holder, we have to have grounds. My only hope is that the ruling shall not be misinterpreted to mean that it is okay to do the kind of lawless things that I see happening across our counties and have the legislative assemblies' hands tied not to raise the alarm because the threshold is too high.

Hon. Duale has raised a very curious point. That is why I am very curious about this ruling. There are impeachment Motions which are going around for signatures. For the Leader of the Majority Party to ask you to try to make a ruling and apply it retroactively it sounds thoroughly suspect. He ought to have given you just that space to make the ruling and not to try to show us that-- He has shown us why this ruling has been made.

I have been here for many years and I find it difficult that you, as our leader, would imagine that this ruling is not the way we interpret the laws before us. I know a ruling of this magnitude is usually sought by a Member of Parliament. You have gone further to say that the dictionary defines 'gross misconduct' in a different way and our courts have defined it differently. It, therefore, means another Member of Parliament may also define it in a different way.

I plead with you that we go the route of your recommendation that the Procedure and House Rules Committee looks at this matter and makes it easy for us, as legislators, to do our work in a way that the Executive is not intimidated but members are also not gagged from doing their work.

Hon. Speaker, you raised the very important point of Members of Parliament appending their signature on a petition to deal with an issue concerning a member of the Executive and then withdrawing the signature. The first interpretation it gives the public is that somebody has been seen and you know what that means. When Members rush to sign--- I am not even sure pinning this Motion on a wall somewhere will stop this kind of behaviour. We need to caution ourselves before we get involved in these things.

I would be comfortable as a Member of Parliament that a Member who wishes to bring a matter before the Office of the Clerk by following the Standing Orders and the Constitution gets

an opportunity to explain to Members much like you have recommended. However, I plead with the Procedure and House Rules Committee to close the window for any Member ever withdrawing his or her signature after appending. For Members to withdraw their signature, it means they want to stop the Motion from coming to this Floor. A Member can come and vote against the Motion on the Floor. Nothing stops a Member from voting against a Motion. It looks really bad, cheap and suspect that Members can append their signatures and turn around and withdraw them so that they can deny a colleague the chance to put his or her case before the House for debate.

Hon. Speaker, I thank you.

Hon. Speaker: Fortunately, I am only happy to observe and that is why I gave an opportunity to the two leaders because, as rightly said by Hon. Midiwo, he has been around for many years. Therefore, Hon. Midiwo and Hon. Duale are quite aware that the Speaker's ruling can never be the subject of debate. If nothing else, those many years must have taught them that. So, because the Communication is self-explanatory, the Standing Orders will apply as they are. That is why I have called upon the Procedure and House Rules Committee to now have a look at those Standing Orders at the next review but, you must go by what you have. It is so self-explanatory that if we appreciate that Article 165 of the Constitution grants the High Court the power to interpret provisions of the Constitution, those interpretations, as adopted both by our judges of the High Court and the Court of Appeal and, indeed, borrowing from other neighbouring jurisdictions that have had occasion to examine similar issues, will form the kind of precedent that we, as a House of procedure and rules, should be bound by. Therefore, there will be no debate on that.

Hon. (Eng.) Gumbo: On a point of order, Hon. Speaker.

Hon. Speaker: I have seen Hon. Gumbo wants to raise an issue.

Hon. (Eng.) Gumbo: No.

Hon. Speaker: Is it on this? It is not on this. For this one, I will encourage Members to get a copy of the Communication. He has no special place to speak. I have recognised Hon. Gumbo who has a point of order.

Hon. (Eng.) Gumbo: Hon. Speaker, it is not on your ruling which you have just made. I just want to say that in future, maybe, those who draw the sanctions need to make them stiffer. What I want to say is in regard to the statement by the Leader of the Majority Party. We tabled a report here as the Public Accounts Committee (PAC) on the Judiciary and it had quite a number of issues which were of public interest. It is now about four months since the report was tabled. Given that the matters therein are really weighty and touch at the core of the Judiciary, I request that that report be prioritised for debate so that it comes here, we debate and get over with it.

Thank you.

Hon. Speaker: Indeed, I think the Leader of the Majority Party is aware.

Hon. A.B. Duale: Hon. Speaker, I totally agree with the Chairman of PAC. I am sure with the many things ongoing in the Judiciary today we, the House Business Committee (HBC), will consider that. I will talk to the Chairman and ask him which one, of the many reports he has, can be brought next week for priority. We will definitely do that. More so, there was the PAC report on the Judiciary. We will bring it next week.

Hon. Alfred Keter: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Alfred Keter, you are on a point of order.

Hon. Alfred Keter: Thank you, Hon. Speaker. I got in when you were in the middle of your Communication. I know it was touching on an issue that has a lot of my interest, together with many other Members who supported me, when I gave an intention to move a Motion to impeach Cabinet Secretary (CS), Anne Waiguru. I know that it has been a challenge for me all this time trying to woo Members to support me. I have made a lot of effort to really see that I have a strong ground on this issue. You have said that I cannot challenge the ruling, but I really want to know the status of my Motion. That is because I have been waiting for it for two weeks since I took it to the Clerk, and I understand that it is before you. I do not know what will happen with my intention to move the Motion now that you have given a ruling which is new to us.

Hon. Speaker: Can I help you?

Hon. Alfred Keter: Thank you.

Hon. Speaker: When you want to know the status, you do not raise the matter on the Floor. That is because it might involve other Members discussing a matter which is not yet before the House. I am sure there is correspondence in the usual way of how we communicate matters of this nature. The Communication is not even in my office. It has already left my office. It is on its way to you. It explains what is happening.

Next Order!

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF THE NATIONAL GOVERNMENT CDF BILL

Hon. Lessonet: Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order 120, this House resolves to reduce the publication period of the National Government Constituencies Development Fund (CDF) Bill (National Assembly Bill No. 59) from 14 to 13 days.

Hon. Speaker, this will enable us to do the First Reading today and submit it before the National Assembly Select Committee on CDF for processing, so that we can fast-track this process. We take cognizance of the time available before this Bill becomes law. Therefore, this has necessitated that we reduce the publication period by one day. So, I am just rising to seek the consensus of Members that they support me in this Procedural Motion of reducing the publication period by just one day from 14 to 13 days, so that we can dispose of the First Reading today.

Noting that it is just a Procedural Motion, I am not going to spend a lot of time on it. I call upon the Leader of the Majority Party to second this Procedural Motion.

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker. I beg to second. Being a Procedural Motion, this is a straightforward matter. We know the history of CDF. We have been instructed by the courts to align the CDF with the Constitution. We have complied with that. We have even called it the National Government Constituencies Development Fund Bill. So, all we are doing today is to reduce the publication period so that tomorrow morning, it goes to the Committee under the leadership of Hon. Lessonet.

If possible, they will bring a report next week and we deal with it before we go for the short recess. This Bill, because it does not touch on the Senate, goes straight to the President for assent and we do what we are supposed to do. We will make our CDF legal, move on and build schools, dispensaries, chiefs' offices and roads.

With those remarks, I beg to second and ask my colleagues, particularly those who are Members of the National Assembly Select Committee on CDF, to sacrifice tomorrow and the weekend so that on Tuesday, we have a report from their Committee.

I second.

(Question proposed)

Hon. Members: Put the Question!

(Question put and agreed to)

BILLS

First Reading

THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND BILL

(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Departmental Committee)

Third Reading

THE PARLIAMENTARY POWERS AND PRIVILEGES BILL

Hon. Speaker: Hon. Members, I confirm that we have the necessary quorum for the various businesses appearing here.

(Question put and agreed to)

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

Second Readings

THE COURT OF APPEAL (ORGANIZATION AND ADMINISTRATION) BILL

(Question put and agreed to)

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

THE HEALTH RECORDS AND INFORMATION MANAGERS BILL

(Question put and agreed to)

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

MOTIONS

THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL

THAT, the House do agree with the Report of the Committee of the whole House on Consideration of Senate Amendments to the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013).

(Question put and agreed to)

THE MINING BILL

THAT, the Senate Amendments to the Mining Bill (National Assembly Bill No.9 of 2014) be now considered.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*(The Temporary Deputy Chairlady
(Hon. (Ms.) Shebesh) took the Chair]*

CONSIDERATION OF THE SENATE AMENDMENTS TO THE MINING BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Deputy Leader of the Majority Party, we are waiting for the Chairperson of the Committee, Hon. Chachu Ganya on the Senate Amendments to the Mining Bill.

Hon. Chachu, let us know as soon as you are settled. Are you settled now?

Hon. Ganya: Yes, I am ready.

Clause 5

Senate Amendment

Hon. Ganya: Hon. Temporary Deputy Chairlady, the Senate amendments that I have start with Clause 4.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu, we will do Clause 4 last. We are starting with Clause 5. So, go ahead and give us your remarks on Clause 5.

THAT, clause 5 of the Bill be amended by inserting the words “and the principles of leadership and integrity as set out under Chapter Six of the Constitution” immediately after the words “of the Constitution”.

Hon. Ganya: Thank you, Hon. Temporary Deputy Chairlady. As a Committee, we agreed with this amendment on the basis that, while the Bill captured the principles in the Constitution, the Senate went further and ensured the guiding principles under Chapter 6 of the Constitution are as well embedded in the Bill.

So, we agreed with that amendment.

(Question of the amendment proposed)

*(Question, that the words to be inserted be inserted,
put and agreed to)*

(Senate Amendment to Clause 5 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu, when you are presenting and there is nothing out of the ordinary, you can just indicate that you are proposing according to the Order Paper or you are rejecting so that we can save time. Go ahead.

*Clause 7**Senate Amendment*

THAT, Clause 7 of the Bill be amended in sub-clause (2) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “in the Gazette”.

Hon. Ganya: As a Committee, we rejected this amendment because it suggested that there ought to be a place of negotiation between the Cabinet Secretary (CS) and the Mineral Rights Board. In the same token, it is problematic because the power to make a decision is not placed in any of the authorities - neither in the Mineral Rights Board or the CS. More than that, the Board is just an advisory board to the CS. The executive authority rests with the CS. On that basis, we rejected that amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, it is important to note that the Committee is rejecting this particular amendment and so, as I put the Question, please be aware of that.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted,

put and negatived)

(Senate Amendment to Clause 7 negatived)

Clause 9

Senate Amendment

THAT, Clause 9 of the Bill be amended by inserting the following new sub-clause immediately after sub clause (1) –

(1A) The Cabinet Secretary shall, immediately upon receipt of a report under subsection (1) issue to the person an acknowledgement in writing of the receipt of the report.

Hon. Ganya: We agreed with the proposed amendment from the Senate. That is because it provides for the issuance of the acknowledgement in writing of the receipt of the report made under sub-section (1). When the CS makes a decision, the firms that are trying to get mineral rights inform the CS of the same. Instead, the Senate felt that this should be done in writing acknowledging receipt of that information, which we have no problem with. So, we agree.

(Question of the amendment proposed)

*(Question, that the words to be inserted be inserted,
put and agreed to)*

(Senate Amendment to Clause 9 agreed to)

Clause 16

Senate Amendment

THAT, Clause 16 of the Bill be amended in sub-clause (3) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “Cabinet Secretary shall”.

Hon. Ganya: On this amendment, we disagreed with the Senate as a Committee. This is similar to the one mentioned earlier, which is basically involving two authorities, the CS for Mining as well as the Mineral Rights Board.

The Senate is trying to persuade us to agree that there should be some level of negotiation between the two and yet, none of the authorities are vested with powers to make any decisions. When they disagree, there is nowhere to turn to. Moreover, we felt that the CS has executive authority and the Mineral Rights Board is just an advisory to the CS of the Ministry of Mining. On that basis, we rejected it.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): So, it is rejected by the Committee? Just for confirmation.

Hon. Ganya: Yes. We rejected it.

(Question of the amendment proposed)

Hon. Mulu: Thank you, Hon Temporary Deputy Chairperson, for giving me this chance. Listening to Hon. Chachu in terms of where the consultation is important and why this amendment is being rejected, I am a bit concerned because I thought the whole purpose of consultation is to ensure that power is not vested in one individual. International best practices in terms of management of an institution demands that consultation is necessary before the final decision is taken. That is why even the original Bill from the National Assembly was pushing for consultations. If you look at the first draft, it was more of the CS with no consultations. So, I do not know whether what you are saying is that if the Board objects to something, they have the final authority and the CS cannot take a decision or are you saying they can advise the CS as he takes a decision? I would like to object to this.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me give a chance to one more person before I give you to Hon. Chachu. Let us have Hon. Timothy Wanyonyi.

Hon. Wetangula: Hon. Temporary Deputy Chairlady, I also wish to understand the rationale for rejecting this amendment because I believe consultations will enable the CS to make informed decisions. That is because the Board will have done investigations and whatever they are doing will be something that will come out more clearly. I think it will create consensus. So, I believe the Committee would have looked at this amendment again. It is a well-meaning amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Chachu.

Hon. Ganya: I think I need to give more clarity on this to my colleagues. The duty of the Board is to give technical advice to the CS, and that is appreciated. The problem is that this amendment suggests that there is supposed to be negotiation and an agreement. It does not say what happens if they fail to reach a consensus on that agreement. In that sense, it is problematic. We felt that they should give the necessary guidance to the CS, but the final executive authority rests with the CS. That is true for any Government in this world. On that basis, we felt that the role of the Board should just stop at the stage of technical guidance and advice. However, somebody has to make a decision and in this case, if they fail to agree, then basically, there is nobody who has the mandate to make a decision. That is why we felt that there was a problem and that is why we disagreed with the Senate as a Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. ole Kenta.

Hon. ole Kenta: I would like to agree with Hon. Chachu. I am a Member of the Committee. We decided that to avoid unnecessary tug of war between the executive authority and other institutions that are supposed to act on the instructions or advise of the CS, we believed that we should not alter the authority of the CS. That is because it can be very disruptive and can delay a lot of activities that are supposed to assist the mining industry in the country which is a new venture.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): There seems to be a lot of interest on this particular issue. I will give two more people so that we can put the Question. Let us have Hon. Wilbur Ottichilo

Hon. (Dr.) Ottichilo: I also support the proposal by the Committee, that the power should be vested in the CS. This is because once it goes to the Mineral Rights Board, if there is a stalemate, then it will be very difficult to proceed. Because the CS has executive powers, we thought that it is better he or she takes the burden.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Rachel Nyamai as the last one.

Hon. (Ms.) R.K. Nyamai: Thank you, Hon. Temporary Deputy Chairlady. I would like to support the proposal by the Committee. Looking at the fact that matters of minerals have a lot of interest by various individuals and institutions, it is important to vest the powers to make a decision on a certain individual. It is important for the Cabinet Secretary to have the powers to make a decision on a certain individual. In my view, giving such powers to the Cabinet Secretary is something worthwhile.

I support the Committee's position.

*(Question, that the words to be inserted
be inserted, put and negated)*

(Senate Amendment to Clause 16 negated)

*Clause 20
Senate Amendment*

THAT, Clause 20 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4)-

(5) A person whose land or property is damaged as a result of the exercise of the powers of the Director of Mines under subsection (1) is entitled to fair, prompt and full compensation for such damage in accordance with this Act.

Hon. Ganya: As a Committee, we agree with this proposal by the Senate. This is simply because it protects the property of Kenyans. The amendment seeks to ensure that, in the exercise of the powers of the Director of Mines, if there is any damage done to properties and assets, there is need for compensation for that damage, and it should be as fair as possible. We felt that it was protective of Kenyans and we agreed with that amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I see interest from Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, I wish to support this proposed amendment. Terminologies like 'fair', 'prompt' and 'full' tend to be very qualitative. I wish that in this amendment, we could be courageous enough to introduce quantitative aspects to these amendments. Terminologies like 'fair', 'prompt' and 'full' are subject to perception. What we could have done, and I hope this can be done in the regulations, is to put figures so that we do not make it a whimsical process, which depends on what somebody thinks or considers fair, prompt and full.

Otherwise, I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Cyprian Iringo.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairlady. I support the Committee's position on this amendment. Once somebody's land is acquired by the Government,

company or the ministry for purposes for mining, one should be paid. I would also propose and echo the sentiments of the previous speaker that payments should be done even prior to acquisition. Once the land is acquired, the owner should not keep running up and down in the corridors of the ministry without getting payments. We have had cases where land has been acquired by the State and people are yet to be paid two, three or four years down the line. It should not just be prompt but should be paid before they acquire the land.

I support the amendment.

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Senate Amendment to Clause 20 agreed to)

*Clause 21
Senate Amendment*

THAT, Clause 21 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) –

(3) In exercising the powers under subsection (2), the Director or a duly authorised officer shall ensure that as little damage or inconvenience as possible is caused to the legitimate owner or lawful occupier of the land in respect of which the powers are exercised.

(4) A person whose land or property is damaged as a result of the exercise of the powers of the Director of Geology under subsection (1) shall be entitled to fair, prompt and full compensation for such damage in accordance with this Act.

Hon. Ganya: As a Committee, we agreed with this amendment from the Senate. This amendment seeks to provide for compensation for damage as a result of the exercise of the powers of the Director of Geological Survey. It also seeks to ensure that, in the exercise of the powers of the Director of Geological Survey, minimal damage or inconveniences are occasioned on the owner of the land or any lawful occupier in respect of which the powers are exercised. It is similar to the previous amendment. It is to ensure that in the exercise of the powers of the Director of Geological Survey, minimal damage is done to the properties. We agreed with the Senate on this amendment.

(Question of the amendment proposed)

Hon. Mulu: Hon. Temporary Deputy Chairlady, I agree with the Committee. This amendment is important because we are protecting Kenyans or private owners of property. As we do our mining activities, we need to be sure that we do not cause inconveniences to them. If any inconveniences are caused to them, they should be compensated for that inconvenience. It is a good amendment. I support the Senate amendment.

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Senate Amendment to Clause 21 agreed to)

Clause 30

Senate Amendment

THAT, Clause 30 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause (2) –

(2) The Mineral Rights Board shall comprise of –

- (a) a chairperson with demonstrable knowledge and experience of the minerals and mining sector, who shall be appointed by the President;
- (b) the Principal Secretary responsible for matters relating to mining;
- (c) the Principal Secretary responsible for the National Treasury;
- (d) one person who shall be nominated by the Council of County Governors from amongst the Governors;
- (e) the Chairperson of the National Land Commission;
- (f) the Director of Mines who shall be the secretary to the Mineral Rights Board;
- (g) the Director of Geological Surveys; and
- (h) two persons with professional qualifications and experience in the mining industry who shall be appointed by the Cabinet Secretary.

Hon. Ganya: This amendment is about the composition of the Mineral Rights Board. We felt that we needed to add an additional member to that Board, namely a representative of the Council of Governors. We felt that mining is done in counties and not in space. Counties have interests. We felt that on that Board, the counties need to be represented. Therefore, we added one more member to that Board, namely a representative of the Council of Governors.

Additionally, there is a minor amendment whereby we felt that the Director of Mines, being the officer in-charge of the day-to-day management of mining, would be the most competent custodian of documents, minutes, grants, considerations and notices, so that he serves as a secretary to the Mineral Rights Board. We agreed with the Senate on that amendment.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairlady, I need some clarification. I can see in this Senate Amendment that they are talking about “amongst the governors”. In other words they are proposing that an elected member sits on a board. I do not think that is within our constitutional requirement. That goes against the Constitution. Once you are elected, you are not supposed to hold any other State office. Naturally, even to be elected, you should first resign from any other State appointment before you take over an elective post.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, I want to take over from where Hon. Shaban has left off. Our laws are very clear that the Chairperson of the Council of Governors is a State officer. Our laws are very clear that a State officer cannot have any other income apart from what we have. It is not just about the Chairperson of the Council of Governors. I also see that they have proposed the Chairperson of the National Lands Commission, who is also a State officer, to serve as a secretary to the Board. How is this going to

work? Unless we are going to be told expressly that they are going to sit on this board *pro bono*, we will be violating the law. The law is very clear. The Leadership and Integrity Act states that State officers cannot have any other income apart from what we draw from the consolidated funds. How is this going to work? We need clarity on this. Otherwise, we are going to enact a law which is unconstitutional.

Hon. Barua: Thank you, Hon. Temporary Deputy Chairlady. I would like to support the Mover, Hon. Chachu, because the statement in part (d) says that the person shall be nominated by the Council of Governors. This does not necessarily mean that it is a governor who is nominated to sit on the Board. They can appoint somebody else to represent them.

Secondly, I support the position of having the Director of Mines being the secretary to the Mineral Rights Board.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu, would you like to clarify so that we do not get too many questions on that issue?

Hon. Ganya: Hon. Temporary Deputy Chairlady, Hon. Naomi and Hon. Gumbo have raised a very fundamental issue. We debated this extensively in our Committee. Our thinking was not that one of the governors will sit as a member on this Board, but a representative from the Council of Governors, which is an institution. We felt that they can appoint any other Kenyan---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu, please let me direct the House. Hon. Chachu please read (d) to the end where it says "from amongst the governors" so that you can understand the concerns of the Members. Let me give an opportunity to other people to ventilate. Hon. Kenta.

Hon. ole Kenta: Hon. Temporary Deputy Chairlady, there was a lot of controversy surrounding this particular suggestion. It is necessary to have the Chairman of the National Land Commission on this board because he is the one who is supposed to oversee the management of public land and sometimes minerals. These are national Government assets and therefore, somebody like that must be there. That one is very important. But the issue I had already decided on is the issue of governors. The person who was removed was the Permanent Secretary (PS) in charge of Ministry of Devolution and Planning who was a national Government official. Minerals are a national Government asset. This is something that should be revisited. I do not know how it should be done, but I believe that the governors should not be involved at this level.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Oburu.

Hon. (Dr.) Oginga: Thank you, Hon. Temporary Deputy Chairlady. I tend to agree that the governors should be included. I do not think that State officers cannot be members of a board. What the law says is they cannot be remunerated. So when they sit in the boards they do not get any remuneration. It is right that a governor can be there only that he or she cannot be remunerated for that sitting.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Dennis Waweru. Press your intervention button.

Hon. Waweru: I can see the concerns of Members. In case we are talking about a representative of the Council of Governors (CoG), conflicts might arise with the Constitution. It is something that we need to look at and I want to challenge the hon. Member to look at how we can accommodate the concerns of representation of the county. Perhaps a nominee from the CoG to accommodate their interests and at the same time not to be in conflict with the Constitution.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu, I want to give it back to you for the last bite on this issue.

Hon. Ganya: Hon. Temporary Deputy Chairlady, we stand guided by the House on this, but we strongly felt that the county governments have an interest in this sector and it should be safeguarded. What was there before was that, the Cabinet Secretary (CS) in the Ministry of Devolution and Planning was to represent the interest of the counties. We felt that one of the governors or their representatives is best suited to safeguard their interests on the Minerals Rights Board. That was the spirit of our thinking but we stand guided.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I think you stand guided by the House and that is why we will put the Question. I think we have had enough ventilation on this issue. I will give you one opportunity Hon. Shaban in case you want to say something different then I put the Question.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Chairlady, whereas we agree that they must have a representative, it should not be from amongst the governors. Honestly, you resign to be elected and so how do you go back to a board? That is an unconstitutional.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Shaban that is why the House must make a decision and that is why I need to put the Question now.

*Question, that the words to be left out be left out,
put and negatived)*

(Senate Amendment to Clause 30 negatived)

(Clauses 31 and 32 agreed to)

*Clause 33
Senate amendment*

THAT, Clause 33 of the Bill be amended by deleting sub-clauses (7) and (8).

Hon. Ganya: On this clause, we rejected the amendment from the Senate. The proposal from the Senate was to delete the provision for application for review of the decision of the CS to reject an application for a mineral right and subsequent provision for the communication of the decision in relation to the review. Therefore, one can only apply to the High Court if he is dissatisfied with the decision of the Cabinet. However, there is need for an internal mechanism for a review of a decision of a CS. This will assist in key resolutions of disputes as the court processes can be lengthy and expensive. Basically we felt that instead of people rushing to High Court there should be an internal mechanism for them to review any dispute that could arise. On that basis, we rejected that amendment of the Senate.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): For clarity, you are rejecting that amendment as a Committee?

Hon. Ganya: Yes.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Timothy Wanyonyi, do you have anything to say on this one?

Hon. Wetangula: No, Hon. Temporary Deputy Chairlady. I had wished to speak to the earlier amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, I think the reasoning by the Committee appears convincing to me, that before you go to the High Court there should be an intermediate way to recourse, so I want to agree with the Committee that the Senate's amendment be rejected.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Njogu.

Hon. Barua: Hon. Temporary Deputy Chairlady, I also want to agree with the Committee because this will protect the interest of the small miners who cannot afford the expensive and lengthy court process. We have in mind artisan miners. Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Makali, do you want to speak on this one?

Hon. Mulu: Hon. Temporary Deputy Chairlady, I just want to join my colleagues in agreeing with the Committee. It is important that we have internal mechanisms to sort issues.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I think Hon. Members, if we are in agreement with the Committee--- Hon. Charles I do not want to leave you out. Are you in agreement?

Hon. Njagagua: Yes, Hon. Temporary Deputy Chairlady, I am in agreement with my colleagues.

*(Question, that the words to be left out be left out,
put and agreed to)*

(Senate Amendment to Clause 33 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I hope you know that the House has accepted the Senate's amendments. We move on. I am trying to be as quick as possible but I am also asking that every time the Chair stands, he makes it clear whether they are rejecting or agreeing so that I can be clear to the House. We cannot go back unless through---

*Clause 34
Senate Amendment*

THAT, clause 34 of the Bill be amended in sub-clause (4) by deleting paragraph (a).

Hon. Ganya: On this amendment, we rejected the proposal from the Senate. This is because this amendment is silent on objection with regard to duplication of prospecting and reconnaissance licence. This is essential for protection of community rights. We felt that some

level of protection is necessary. On this one, the Senate amendment is silent and we had to reject it because we felt that community right is important to safeguard.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu, be clear again whether you are rejecting for the sake of the House.

Hon. Ganya: Hon. Temporary Deputy Chairlady, I started by saying we rejected that amendment from the Senate.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Nobody wants to speak on that. So, I will put the Question immediately.

(Question of the amendment proposed)

*(Question, that the words to be left out be left out,
put and negatived)*

(Senate Amendment to Clause 34 negatived)

*Clause 37
Senate Amendment*

THAT, clause 37 of the Bill be amended in sub-clause (1) by deleting the words “A prospecting and” appearing at the beginning of the sub-clause.

Hon. Ganya: Hon. Temporary Deputy Chairlady, the Committee rejected the proposal from the Senate. This is because we felt that before prospecting rights are given on private land, the owner of that land must give consent. So, we rejected it.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I have already proposed. I am now putting the Question. I have just seen your name come up Hon. Gumbo. You can speak on it if you want but I will be putting the Question as soon as you speak. Do you want to speak on it?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, I fully agree with the Committee. The reasons they have canvased are quite in order. Clause 34(a) states that the Cabinet Secretary shall on receipt of the application give notice in writing regarding the application on the grant of a mineral right to the land owner or the lawful occupier of the land where the minerals are located. There is no rationale whatsoever why you would delete that because the application right has to go to the land owner or a lawful occupant. I support the committee’s resolution to reject the Senate amendment.

*(Question, that the words to be left out be left out,
put and negatived)*

(Senate Amendment to Clause 37 negatived)

Clause 38
Senate Amendment

THAT, clause 38 be amended in sub-clause (1) by deleting the word “un-alienated” appearing at the end of paragraph (b) and substituting therefor the word “unregistered”.

Hon. Ganya: We agreed with the proposal from the Senate. It is the use of the word “unregistered” in reference to community land. This amendment provides more clarity on the concept to be given by the National Land Commission. If you read the Constitution, the word used there is “registered”. On that ground, we agreed with the Senate amendment.

(Question of the amendment proposed)

*(Question, that the word to be left
out be left out, put and agreed to)*

*(Question, that the word to be inserted in
place thereof be inserted, put and agreed to)*

(Senate Amendment to Clause 38 agreed to)

Clause 40
Senate Amendment

THAT, Clause 40 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause –

(1) The Cabinet Secretary may submit a request under section 107 of the Land Act for the compulsory acquisition of land or rights or interests in land, to vest the land or area in question, or rights or interests in such land or area, in the Government or on behalf of the Government, where the consent required under sections 36, 37 or 38 is—

- (a) unreasonably withheld; or
- (b) the Cabinet Secretary considers that withholding of consent is contrary to the national interest.

Hon. Ganya: Hon. Temporary Deputy Chairlady, we rejected this proposal. This is because referring to specific section of a particular law poses challenges when other laws are enacted relating to compulsory acquisition of land. For example, the Community Land Bill may have provisions regarding acquisition of community land, and since the proposed amendment only refers to the Land Act, this may be problematic. We wanted one law which is universal when it comes to issues of compulsory acquisition of land, instead of having sections of laws addressing the same. The State has the powers to compulsorily acquire land in public interest. Instead of having a section of the law referring to this, we need to have a universal law that will apply across the board. On that ground, we rejected that amendment.

(Question of the amendment proposed)

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairlady. I stand to support the Committee's proposal. In order for us to give proper and equal justice to all Kenyans, we should be governed by one law instead of sending people to different courts in order for them to get their compensation and rightful adjudication, and rights under the law.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kiptanui.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Chairlady. I stand to support the proposal by the Chair of the Committee. Indeed, at the moment, in the Departmental Committee of Energy, Communication and Information, we are going through the Petroleum Bill. The issue of compulsory acquisition of land has also come up. Indeed, before this House we were also discussing the Community Land Bill. Therefore, it is necessary for us to have one universal law whereby every other person or the Cabinet Secretary (CS) can be directed. We do not have to have different sets of Acts and laws in different Bills.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Muluvi.

Hon. Muluvi: Hon. Temporary Deputy Chairlady, I sit in the same Committee. Laws are not static. We better have one universal law so that when we are talking of that land law, we will have a shift. Even on the Energy Bill, as he has said, there will be a shift. Therefore, that is what informed us to say that we reject the Senate amendment in totality.

*Question, that the words to be left out be left out,
put and negatived)*

(Senate Amendment to Clause 40 negatived)

Clause 41

Senate Amendment

THAT, clause 41 be amended in sub-clause (2) by deleting the words "which recognise the uniqueness of procurement and tendering process of minerals" appearing at the end of the sub-clause.

Hon. Ganya: We agreed with this proposed amendment from the Senate. This amendment deletes the provisions for the CS to take into consideration uniqueness of procurement and tendering process of minerals, while coming up with regulations for tendering guidelines for mineral rights.

The Senate felt that part of the Bill will lead to some level of corruption. Because mining is unique and has few challenges, somebody can ask for special favours, which might not augur well--- On that basis, we agreed with the Senate.

(Question of the amendment proposed)

Hon. ole Kenta: Hon. Temporary Deputy Chairlady, there is some of kind of misunderstanding here. I do not know whether it is me who did not understand. I believe we said that in mining, there must be ring-fencing because there is a unique way of doing it. There is qualification. If they cannot do so because of lack of financial muscle and if it is opened for

anybody to procure or get a licence--- I do not know whether there is any confusion. I thought we said we retain what is there, as this is a specialized field. You cannot just open to any Tom, Dick and Harry. We said it must be special.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Are you agreeing with the Committee or disagreeing?

Hon. ole Kenta: I am not agreeing with the proposed amendment from the Senate.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Which means you are disagreeing.

Hon. ole Kenta: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Makali.

Hon. Mulu: Hon. Temporary Deputy Chairlady maybe the Chairperson of the Committee was not very clear. I tend to agree with what Hon. ole Kenta is saying. This sector has some uniqueness which must be appreciated, even as we procure. The Committee is rejecting this amendment from the Senate which is saying that we should do away with the uniqueness nature and just procure like any other sector. I do not know whether the Chairman needs to clarify that. According to me, we are rejecting the proposed amendment by the Senate.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu, would you like to clarify?

Hon. Ganya: Hon. Temporary Deputy Chairlady, towards the end of that clause, there is a statement to that effect which says:-

“which recognise the uniqueness of procurement and tendering process of minerals, while coming up with regulations on tendering guidelines for mineral rights”.

This is what they deleted, where it was saying that when doing the regulation, the CS should consider the uniqueness of procurement and tendering in this sector. However, the Senate said that is not necessary. As a Committee, we agreed with the Senate.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, I agree with the Committee’s position. Subjective measures like uniqueness are always fraught with people’s personal biased opinions. Unless we introduce this amendment and then say that the regulations will quantify what constitutes uniqueness, merely saying uniqueness is not enough. These subjective measures allow people to form biased opinions and it is very difficult to pin somebody down. How do you measure uniqueness? We have to be able to measure things.

Hon. (Ms.) Munene: Thank you, Hon. Temporary Deputy Chairlady. I do not agree with the Committee because we need to know what is exactly happening in this sector. If we say uniqueness, our people are not going to benefit from mining activities. We want the local people to benefit.

Thank you, Hon. Temporary Deputy Chairlady.

*(Question, that the words to be left out be left out,
put and agreed to)*

(Senate Amendment to Clause 41 agreed to)

*Clause 46
Senate Amendment*

THAT, Clause 46 of the Bill be amended in sub-clause (3) by deleting the words “number of expatriates per capital investment” appearing immediately after the words “shall serve”.

Hon Ganya: Hon. Temporary Deputy Chairlady, as a Committee we agreed with this amendment. It deletes the making of regulations that cover the number of expatriates per capital investment by the Cabinet Secretary (CS). Basically, the provision says that depending on the capital investment you are doing, you should be allowed to bring in as many expatriates as required. We felt that will not favour the employment of Kenyans. On that basis, we agreed with the Senate on the amendment.

(Question of the amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed to)*

(Senate Amendment to Clause 46 agreed to)

*Clause 47
Senate Amendment*

THAT, Clause 47 of the Bill be amended in sub-clause (1) by inserting the words “members of the community and” immediately after the words “in employment to”.

Hon. Ganya: As a Committee, we agreed with the Senate amendment. The amendment clearly provides for additional preference for members of the local communities in employment in the mining sector. On that basis, we agreed with the Senate.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Otichilo.

Hon. (Dr.) Otichilo: Hon. Temporary Deputy Chairlady, I agree with this proposal by the Committee. Many a times, when we have mining in a community, you find that the investor brings people from outside and the local people are marginalised and cannot get jobs and yet, that asset is within their community. So, this amendment gives a guarantee that the people in the community can access jobs in this sector.

Hon. Barua: Hon. Temporary Deputy Chairlady, I would like to support the position of the Committee, but I would like to put a caution in the definition of the word “community”. Sometimes, communities transit into ethnic groups. Although I am supporting the amendment, I suggest that the term “community” should be broadened so that it can include people who live in the area even if they do not belong to the dominant ethnic group in the area.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairlady, I support this amendment because the community should benefit. However, there is also a very important matter. In issues like mining and such industries, sometimes, you find that some of the processes may actually be harmful to the members of the community. If the members of the community are represented, they are more likely to sound a red alert. If there are no community representatives, people may take time and even try to hide. I, therefore, support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Muluvi, are you opposing?

Hon. Muluvi: No. I want to clarify one thing a member of our Committee has said. When we talk of the community, we talk about the people who are domiciled within the mining area. There will be a big rush if we say community involves everybody who is around. Even Tanzanians and other people from other regions will come over and that is not the local community. For example, if mining is taking place in Kitui, the local community includes the people within the locality where the mines are located.

That is the clarification I wanted to make, Hon. Temporary Deputy Chairman.

*(Question, that the words to be inserted be inserted,
put and agreed to)*

(Senate Amendment to Clause 47 agreed to)

*Clause 49
Senate Amendment*

THAT, Clause 49 of the Bill be amended in sub-clause (2) by deleting the word “four” appearing immediately after the words “exchange within” and substituting therefor the word “three”.

Hon. Ganya: As a Committee, we rejected this amendment from the Senate. The amendment reduces the time within which a holder of a mining licence, whose planned capital expenditure exceeds the prescribed amount, can raise its equity from the stock exchange from four to three years. We felt this amendment is unfriendly to investors. It is about whether the duration should be four or three years. We feel four years is desirable to attract investors. On that basis, we disagreed with the Senate amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Charles Mong’are.

Hon. Geni: Thank you, Hon. Temporary Deputy Chairlady. I join my Committee members in opposing this Senate amendment in totality. The reduction of the number of years from four to three will not only be unfriendly to the investors, but will also scare them away. So, I oppose the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairlady, the reasons given by Hon. Chachu Ganya are reasonable. In any case, merely reducing the period from four to three years at the expense of giving the wrong signals to investors is not worth it. So, I support the proposal by the Committee that we reject the Senate amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Iringo.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairlady. I support the position of the Committee.

(Question, that the word to be left out be left out,

put and negatived)

(Senate Amendment to Clause 49 negatived)

Clause 50
Senate Amendment

THAT, Clause 50 of the Bill be amended in paragraph (b) by inserting the words “members of the community and” immediately after the words “offered by”.

Hon. Ganya: As a Committee, we agreed with this amendment. The amendment gives members of the community an additional preference by a holder of mineral rights in the conduct of prospecting, mining, processing, refining and treatment operations and transport, or any other dealings in mineral business. We felt members of the community need to be considered. On that basis, we agreed with the Senate.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, so that we can move faster because we have a number of amendments, those who disagree with the Committee are the ones I would like to hear first. If you agree with the Committee, please, allow us to move on.

Hon. Kiptanui, do you agree with the Committee?

Hon. Kiptanui: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Then allow us to move forward.

*(Question, that the words to be inserted be inserted,
put and agreed to)*

(Senate Amendment to Clause 50 agreed to)

Clause 51
Senate Amendment

THAT, Clause 51 of the Bill be amended—

(a) by deleting sub-clause (2) and substituting therefor with the following new sub-clause —

(2) The Cabinet Secretary shall not unreasonably withhold consent to assign, transfer, and mortgage or trade a mineral right and shall inform an applicant of the decision within thirty days of receipt of an application to assign, transfer, mortgage or trade a mineral right.

(b) By inserting the following new subsection immediately after subsection (8)—

(8A) The Cabinet Secretary shall, in consultation with the Mineral Rights Board, prescribe a criteria for the conditions required to be met by an applicant for an assignment, mortgage or trade in a mineral right.

Hon. Ganya: Hon. Temporary Deputy Chairlady, as a Committee, we rejected the proposal from the Senate. The time-frame is too short for the regulator to carry out any

meaningful due diligence on a prospective assignee or transferee especially for large scale projects. Initially, introduction of a new sub-clause to provide the criteria for search, transfer, mortgage or assignment is already provided for in the Bill. This is repetitive. On that basis, we rejected that amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Cyprian, do you agree with the Committee? You agree.

*Question, that the words to be left out be left out,
put and negatived)*

(Senate Amendment to Clause 51 negatived)

Clause 53

Senate Amendment

THAT, Clause 53 of the Bill be amended –

- (a) in sub-clause (1) by inserting the words “and the Kenya Revenue Authority” immediately after the words “the Cabinet Secretary”; and
- (b) inserting the following new sub-clause immediately after sub-clause (1) –
 - (1A) The Cabinet Secretary shall submit to the National Assembly and the Senate, an analysis of the audited annual financial statement submitted under subsection (1).

Hon. Ganya: Hon. Temporary Deputy Chairlady, as a Committee, we agreed with the proposed amendment.

*Question, that the words to be inserted be inserted,
put and agreed to)*

(Senate Amendment to Clause 53 agreed to)

Clause 67

Senate Amendment

THAT, Clause 67 of the Bill be amended in sub-clause (1) by deleting paragraph (e) and substituting therefor the following new paragraph –

- (e) inform and consult on an ongoing basis with the national and county government authorities and communities about the reconnaissance operations that require physical entry onto the land within their jurisdiction;

Hon. Ganya: Hon. Temporary Deputy Chairlady, as a Committee, we agreed with the proposed amendment from the Senate. The amendment includes consultations with the national Government and county government authorities about reconnaissance operations that require physical entry into the land within their jurisdictions and excludes consultations with traditional authorities. We felt that there are basically two levels of Government, one being the national Government and the other being the county governments. We really felt that investors should

deal with governments and not necessarily traditional authorities in those areas. On that basis, we agreed with the proposed amendments from the Senate.

*Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

(Senate Amendment to Clause 67 agreed to)

*Clause 77
Senate Amendment*

THAT, Clause 77 of the Bill be amended in sub-clause (2) by deleting the words “by the Cabinet Secretary” appearing at the end of the sub-clause and substituting therefor the words “Regulations made under this Act”.

Hon. Ganya: Hon. Temporary Deputy Chairlady, as a Committee, we agreed with the amendment from the Senate. The amendment provides for the payment to the Ministry expenditure specified in the approved programme for prospecting operations which are not expended during the term of prospecting licence in a manner that may be prescribed by regulations made under the Act and not by the Cabinet Secretary (CS). We agreed.

*Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

(Senate Amendment to Clause 77 agreed to)

*Clause 106
Senate Amendment*

THAT, Clause 106 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i)–

(j) such other information as the Cabinet Secretary may consider necessary.

Hon. Ganya: Hon. Temporary Deputy Chairlady, as a Committee, we agreed with the proposed amendment. The amendment provides for provisions for mining licence to contain any other information the CS may require. Basically, it gives the CS the discretion to request for other information where necessary. We agreed with the Senate.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Cyprian.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairlady. I support the Committee’s position because I feel that once the Bill has been drafted and all the clauses have

been put in place, there comes a specific situation where the CS can have discretion to ask for more information for further clarification. I support.

*Question, that the words to be inserted be inserted,
put and agreed to)*

(Senate Amendment to Clause 106 agreed to)

Clause 117

Senate Amendment

THAT, Clause 117 of the Bill be amended in sub-clause (5) by deleting the word “Parliament” appearing immediately after the words “submitted to” and substituting therefor the words “the National Assembly and the Senate”.

Hon. Ganya: Hon. Temporary Deputy Chairlady, as a Committee, we agreed with the proposed amendment. This is a simple amendment. It requires mineral rights agreements to be submitted for ratification to both the National Assembly and the Senate. In the Bill, it just says “Parliament.” The Senate felt that if it says “Parliament”, it basically means the National Assembly. They were trying to protect their turf. They wanted it to be as specific as possible and avoid any ambiguity. So, they proposed that it should be changed to read “the National Assembly and the Senate” and we agreed with them.

*Question, that the word to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

(Senate Amendment to Clause 117 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu, I want to give you a minute to consult with Hon. Shaban. We are almost coming to the end. Have you consulted?

Hon. Ganya: Yes, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay.

Clause 120

Senate Amendment

THAT, Clause 120 of the Bill be amended in sub-clause (2) by deleting the word “Parliament” appearing immediately after the words “submitted to” and substituting therefor the words “the National Assembly and the Senate”.

Hon. Ganya: Hon. Temporary Deputy Chairlady, in this we again agreed with the Senate. It is similar to the one that preceded it. The amendment requires that agreements relating to large scale mining on terrestrial and marine areas be submitted for ratification to both the National Assembly and the Senate. The logic is the same and we agree with them.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Makali.

Hon. Mulu: Hon. Temporary Deputy Chairlady, while the Chair of the Committee seems to tell us that you are more specific when you say “the National Assembly and the Senate,” in the Constitution, the use of word “Parliament” refers to the two Houses. I do not know what value we are adding by changing “Parliament” to “the National Assembly and the Senate”. The word is “Parliament”. When you talk about Parliament, it means the two Houses will get the report. Since we seem to agree, we can include it but I thought it is important to clarify that Parliament is a composition of the National Assembly and the Senate.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Beatrice.

Hon. B.N. Nyagah: Thank you, Hon. Temporary Deputy Chairlady. I agree with Hon. Makali. When we talk about Parliament, we talk of two Houses - the Senate and the National Assembly. So, I do not know why the Committee wants to use the two names. The word “Parliament” is enough.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tonui.

Hon. Tonui: Thank you, Hon. Temporary Deputy Chairlady. I wish to oppose this because I do not see the role of the Senate on this issue. In the Constitution, mineral exploration is specifically a function of the national Government and does not include county governments. So, bringing in the Senate will complicate decision-making on the issues of minerals. I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu would like to clarify?

Hon. Ganya: Hon. Temporary Deputy Chairlady, as a Committee, we really felt that we have enough battles with the Senate and that this is a trivial one. It just concerns what the word “Parliament” means. It means both Houses. On this, we decided to let it go. Moreover, we have two levels of government. The spirit and letter of the Constitution is that they should cooperate and work in harmony. Mineral rights and mining is done in counties. It is not done in space. It is done in community or public land within counties. The Constitution provides that if any development plans are to be approved in those lands, whether it is community or public lands, it must be approved by county governments.

Hon. Temporary Deputy Chairlady, we will just bring acrimony and stop investment for no reason. On that ground, we really felt that this is a very minor thing and we should not have a battle over it.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Barua, do you agree or disagree with the Committee?

Hon. Barua: Hon. Temporary Deputy Chairlady, I agree and clarify that the original Bill was talking about Parliament but, the Senate found it wise for the name “Senate” to appear. I want to address Hon. Makali Mulu and say that, that change is neither adding nor reducing any value and so the Committee did not see the need for contesting.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. ole Kenta.

Hon. ole Kenta: Hon. Temporary Deputy Chairlady, I agree with Hon. Mulu because in the Constitution and all the statutory enactments, the word used is “Parliament”. So, the distinction does not make sense but it may be because of the fear they have. Hon. Tonui said that the Senate should not be involved. I oppose and say that it should be involved because this affects the counties. There is no way you can rule them out even if we do not like them. The word “Parliament” should have been the right word and not the two names.

Hon. Muluvi: Thank you, Hon. Temporary Deputy Chairlady. Minerals, according to the Constitution, belong to the central Government. When we make it operational and say that the counties must give a go ahead for any investor to start business on the ground, it is not good. As you know, the Senate anchors its business around the counties. Either way, like Hon. Makali Mulu has said it does not matter whether it is in the National Assembly. Because we did not want to contest them, we agreed with their amendments.

Thank you, Hon. Temporary Deputy Chairlady.

(Question of the amendment proposed)

*(Question, that the word to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

(Senate Amendment to Clause 120 agreed to)

Clause 149

Senate Amendment

THAT, clause 149 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub-clauses:–

(3) All immovable assets of the holder under the mining licence shall vest in the County Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the County Government.

(3A) Where the County Government is unable to pay for the assets under subsection (3), the assets shall vest in the National Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the National Government.

As a Committee, we rejected these proposed amendments basically because we felt they are unconstitutional. Article 62(1)(f) and (3) classify minerals as public land, which is vested in the national Government. The national Government's decision to create a National Mining Corporation (NMC) to participate in mining and mineral activities in the country, and as it is the practice in Namibia and many other countries, we felt this is really within the ambit of the national Government on those bases. Based on the fact that we felt that this is unconstitutional, we rejected it.

(Question of the amendment proposed)

Hon. (Dr.) Ottichilo: I want to agree with the Committee because this issue is very tricky. What the Senate was proposing is that once a mining operation has ended, the equipment should be surrendered to the county government. This did not look very right to us; what will the county government do with the equipment? The Government has, or we have, created a NMC

within this Bill, which is supposed to carry out business in mining. So, we thought it is prudent to hand over the equipment to the NMC, which will continue because it will have the expertise unlike the county government, which will not have any use for that equipment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kubai Iringo.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairlady. I concur with the Committee. The county governments want to get into what the national Government should be doing. After the exercise, or when the mining is going on, it is envisaged that that particular county will be getting its levies from the mining operations. At the end of the exercise, I do not support them to get the equipment, because there will be a body in the national Government which should handling all the mining operations in the country; it should be centralised.

I support the Committee.

Hon. ole Kenta: I oppose this Senate amendment because it will bring conflict between counties, especially when the mining company is operating in two counties. How will they share that property? That will bring conflict.

I oppose this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay.

*(Question, that the words to be left out be left out,
put and negatived)*

(Senate Amendment to Clause 149 negatived)

Clause 4

Senate Amendment

THAT, clause 4 of the Bill be amended –

- (a) by deleting the definition of the word “community” and substituting therefor the following new definition –

“community” means a people living in a ward or wards within which minerals are situated and who are affected by the exploration of the minerals or mining operations with respect to the minerals;

- (b) by inserting the following new definition immediately after the definition of the word “corporation” –

“Council of County Governors” means the Council of County Governors established under section 19 of the Intergovernmental Relations Act;

- (c) by deleting the definition of the word “strategic minerals” and substituting therefor the following new definition –

“strategic minerals” means minerals declared as such by the Cabinet Secretary with the approval of the Cabinet and by notice in the Gazette;

As a Committee, we rejected the proposed amendments from the Senate. This is basically about some definitions of “community”. While we felt that the Senate gave some definition for “community”, they left out an important aspect which is that the communities which are displaced are not included. We felt displacement is likely to happen when mining is done in most

of these areas. On that basis we rejected that amendment because those grounds were not conclusive.

Similarly, there is a definition of the Council of Governors (CoG) which the Senate provided. On that one, and as a Committee, we agreed because we felt it was now unambiguous. On that basis, we agreed with it.

The third one is the definition of “strategic minerals”. We rejected the amendment simply because it is repetitive. The same definition was provided under Clause 16; we felt it was unnecessary to define it again.

Hon. Temporary Deputy Chairlady, I do not know how we will go about it.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairperson, just tell us which ones you have rejected. You have rejected some and accepted some?

Hon. Ganya: Yes. Maybe we should go one by one.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Which one do you reject? Out of (a), (b) and (c), which one is agreed on and which is rejected? What is (a)?

Hon. Ganya: (a) is rejected, (b) is accepted and (c) is rejected.

Just a minute; yes, it is that way for those three.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Therefore, we will move section by section, and vote that way.

(Question of the amendment proposed)

I can see there are a few people who want to speak to it. Hon. Wafula Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. I wish to agree with the Hon. Chairperson that some of the amendments proposed to Clause 4 are rather ambiguous. When we talk of “community” we may mean a ward or wards. We have people living in villages, sub-locations and locations. Are they not in those areas or are they not communities?

These ones required more clarification. I am, therefore, reluctant to support these amendments. Similarly, the last amendment to part (c) does not add any value. So, I support the Hon. Chairperson in opposing those amendments.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tonui.

Hon. Tonui: Thank you, Hon. Temporary Deputy Chairlady. I oppose Clause 4(a) because of this definition of “community”. I believe it should be capturing those people who have really settled in that place or those who are displaced, and not the people who have just come to take advantage of the situation. If you simply say “people who are present at that given moment,” especially if you are dealing with bursaries and such, it will not benefit the indigenous people. So, the definition of this “community” needs to be looked into afresh.

I accept and support (b). About (c), I believe all minerals are strategic.

Thank you and I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Members, I now want to put the Question. For part 4(a), have in mind that the Committee has rejected it.

*(Question, that the words to be left out be left out,
put and negatived)*

(Senate Amendment to Clause 4(a) negatived)

*(Question, that the words to be inserted be inserted,
put and agreed to)*

(Senate Amendment to Clause 4(b) agreed to)

*(Question, that the words to be left out be left out,
put and negatived)*

(Senate Amendment to Clause 4(c) negatived)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chachu.

Hon. Ganya: Hon. Temporary Deputy Chairperson, I beg to move that the Committee do report to the House its consideration of the Senate Amendments to the Mining Bill, National Assembly Bill No. 9 of 2014 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Mbalu in the Chair)]*

REPORT

CONSIDERATION OF THE SENATE AMENDMENTS TO THE MINING BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Mover, move for agreement with the Report

Hon. (Ms.) Shebesh: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Senate Amendments to the Mining Bill and has approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Mover.

Hon. Ganya: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report subject to the recommittal of Clause 33. I also request Hon. (Dr.) Ottichilo to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. (Dr.) Ottichilo: Hon. Temporary Deputy Speaker, I second this Motion. I thank Hon. Chachu for doing an excellent job. This Bill has been with us for a long time. It is a very important Bill for this country. When enacted, this Bill is going to transform this country. It is going to change the economy of this country probably from agricultural to an extractive industry, for which this country has a lot of potential.

So, I second this Motion and thank the Chairman, Hon. Chachu.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Mbalu left the Chair)]*

IN THE COMMITTEE

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Shebesh) took the Chair]*

CONSIDERATION OF THE SENATE AMENDMENTS TO THE MINING BILL

(Re-committal of Clause 33)

*Clause 33
Senate Amendment*

Hon. Ganya: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 33 of the Bill be amended by deleting sub-clauses (7) and (8).

As a Committee, we rejected this amendment from the Senate. When someone needs to get redress, once the CS rejects the application for mineral rights--- What the Senate suggested is that once it is rejected, they should move to the High Court. We felt that before one moves to High Court we need to have internal mechanism for review of that decision. We felt that an internal mechanism would lead to a quick resolution of the dispute. The court process might be lengthy and expensive. On that basis, we disagreed with the Senate.

(Question of the amendment proposed)

The Temporary Deputy Chairperson (Hon. (Ms.) Shebesh): Okay. Hon. Chairman. The Committee rejected that proposal. I see there are Members who still want to contribute to this one. Let us have Hon. ole Kenta.

Hon. ole Kenta: I agree with him on this one. At the end of the day, there should be a mechanism for review of decisions. You cannot lock out administrative actions of a CS. It is also going to save time and costs. You cannot just tell people to go to the High Court; agreements themselves are self-regulatory, and there are provisions for arbitration. So, locking out that mechanism was wrong by the Senate.

The Temporary Deputy Chairperson (Hon. (Ms.) Shebesh): Let us have Hon. Wafula Wamunyinyi.

Hon. Wamunyinyi: Thank you, Temporary Deputy Chairlady. I also concur with the Chairman and members of the Committee. There must always be mechanisms for resolution of issues. You cannot have one way out and lock out other ways, which may have the matter resolved. I, therefore, agree with the Committee that this amendment should be rejected.

*(Question, that the words to be left out be left out,
put and negatived)*

(Senate Amendment to Clause 33 negatived)

The Temporary Deputy Chairperson (Hon. (Ms.) Shebesh): Mover.

Hon. Ganya: Hon Temporary Deputy Chairman, the Motion for agreement with the Report of the whole House---

The Temporary Deputy Chairperson (Hon. (Ms.) Shebesh): Hon. Chairman, we are moving out of the Committee. So, you move the reporting.

Hon. Ganya: Thank you. I stand guided.

Hon. Temporary Deputy Chairlady, I beg to move that the Committee do report to the House its consideration of the Senate Amendments to the Mining Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Mbalu in the Chair)]*

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order Members. Can we have Hon. Shebesh doing the reporting?

Hon. (Ms.) Shebesh: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered Senate Amendments to the Mining Bill and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Can we have the Mover of the Bill?

Hon. Ganya: Hon. Temporary Deputy Speaker, I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words "subject to the re-committal of Clause 33."

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Chachu, you are moving agreement with the Report. We are not recommitting. We are not amending anything. It is for agreement with the Report.

Hon. Ganya: Thank you, Hon. Temporary Deputy Chairperson. I stand guided.

Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I also request Hon. Ottichilo to second the Motion for agreement with the Report to the Committee of the whole House.

Hon. (Dr.) Ottichilo: I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Members, I confirm that we are not in position to put the Question. Therefore, I defer putting the Question to the most appropriate time, which is the next sitting.

Next Order!

PAPER LAID

Hon. Abongotum: Hon. Temporary Deputy Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Departmental Committee on Administration and National Security on its consideration of a Petition by Mr. Simon Katee, on behalf of Juhudi Community Support Centre, seeking the removal of Maj. (Rtd.) Mulu Shadrach Mutia as a Commissioner of the National Police Service Commission

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You can now give it to the Clerks-at-the-Table and proceed to give notice of Motion.

NOTICE OF MOTION

ADOPTION OF REPORT ON PETITION SEEKING REMOVAL OF MAJ. (RTD) S. M. MUTIA FROM NPSC

Hon. Abongotum: Hon. Temporary Deputy Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Committee on Administration and National Security on the Petition by Mr. Simon Katee, on behalf of Juhudi Community Support Centre, seeking the removal of Maj. (Rtd) Mulu Shadrach Mutia as a Commissioner of the National Police Service Commission laid on the Table of the House today Thursday 22nd October, 2015 and, in accordance with the provisions of Article 251(3) of the Constitution and Standing Order No. 234, finds that the Petition discloses sufficient grounds for the removal of the said Commissioner from the National Police Service Commission.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you.

Next Order!

BILL

Second Reading

THE PETROLEUM (EXPLORATION,
DEVELOPMENT AND PRODUCTION) BILL

Hon. (Dr.) Shaban: Hon. Temporary Deputy Speaker, I beg to move that the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) be now read a Second Time.

This is a Bill of great importance given all the activity in the oil and gas sector in Kenya over the past decade. Oil and gas discoveries continue to be made and the prospects for the sector are very bright. It is for this reason that we must, as a nation, update the legal framework. It is for this reason that the Government brings to the Floor of this august House the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015).

This Bill will be invaluable in moving the oil and gas sector to the next level as we seek to explore it and benefit from this nature of resources. This Bill has been prepared pursuant to Article 69 of the Constitution of Kenya, which deals with the State's obligations in respect of natural resources, especially their sustainable exploitation, utilisation, management and conservation, and the equitable sharing of their benefits. The Bill shall also repeal the Petroleum Exploration and Production Act, Cap 308 of the Laws of Kenya.

This Bill seeks to provide a robust framework for the contracting, exploration and development of petroleum as well as the production of petroleum discovered within licensed petroleum exploration blocks. The Bill also provides a framework for the safe cessation of upstream petroleum operations.

Part I of this Bill deals with standard preliminary issues such as definition of terms as used in this Bill, commencement, application and supremacy of the Bill on matters relating to upstream petroleum operations.

Part II deals with the national upstream petroleum policy and plan. This part entrenches policy-making and implementation by way of master plans in law, so that obligations are placed and timelines determined to ensure that the same are done on time. This part also places obligations on the national Government to create a conducive environment for upstream petroleum investments while ensuring that the investments are carried out for the equitable benefit of the people of Kenya. This is very important for our nation, more so in petroleum issues because we have seen it in other countries, where people have not benefited and have suffered because of confusion in the upstream explorations.

Part III deals with petroleum institutions, their powers and functions. The petroleum institutions include the Cabinet Secretary (CS), the National Upstream Petroleum Advisory Committee and the Upstream Petroleum Regulatory Authority.

Part IV deals with upstream petroleum rights and management of petroleum resources. This Part vests all petroleum existing in its natural condition in the national Government, which will hold it in trust for the people of Kenya. It further provides for the constitution of blocks, upstream petroleum licensing, exploration development and production of petroleum and succession of upstream petroleum operations.

Part V deals with information and reporting. The Part provides for the reporting requirements for the contractor and information that may be required by the CS. The Part provides the offences relating to refusal to provide information and provision of false information to the CS, or the Authority. It should be noted that such an industry, which usually

would bring in quite a lot of money, attracts quite a number of people who are bound to be giving false information. Part V will deal with issues of people furnishing the Authority with the right information.

Part VI deals with the very important question of the local content, which has been defined to mean the added value brought to the Kenyan economy from petroleum-related activities through systematic development of national capacity, capabilities and investment in developing and procuring locally available workforce, services and supplies for the sharing of accruing benefits. The part authorises the Authority to monitor and enforce local content requirements in upstream petroleum operations. The part further provides for the training of Kenyans and the formulation of local content regulation in upstream petroleum operations. It should be noted that this being a new field, which is being exploited in Kenya, it is important for people to be trained and have the necessary skills for this sector.

Part VII deals with payments and revenues. The part obligates all contractors to pay all the relevant fees and levies as may be prescribed in the petroleum agreement and any other relevant legislation. The part further provides for sharing of petroleum revenues and the establishment of a Sovereign Wealth Fund to provide endowments to support development for the benefit of future generations and to enhance the development of Kenya's infrastructure, amongst other purposes. This is in keeping with the spirit of Article 89 of the Constitution on the equitable sharing of benefits from our natural resources.

As people are busy opening up this sector and making sure that we share the wealth that comes from our petroleum products, which is our God given natural resource, it is important for it to be very clear as per Article 69 of our Constitution, so that Kenyans can benefit from this sector.

Part VIII deals with the environment, health and safety in upstream petroleum operations. The part requires all contractors to comply with all environmental, health safety and maritime laws in upstream petroleum operations. The part prohibits the venting and the flaring of oil and natural gas except with the authorisation of the Authority and the national Government agency responsible for environment during production and testing for emergency reasons.

This part also establishes a disaster preparedness, prevention and management unit under the Ministry to coordinate response to accidents, disasters and other emergencies with relevant Ministries and agencies. In addition, it provides for establishment of a trustee fund and board of directors by relevant county governments in consultations with the local community for purposes of management and accountability of the share of petroleum revenues earmarked for the local community.

Part IX deals with the use of land in upstream petroleum operations while Part X deals with miscellaneous provisions. This part provides for dispute resolution mechanisms, provisions in transparency and accountability and offences under the Act. The part further provides for the rights of the communities in petroleum resource areas and regulations in upstream petroleum operations.

Part XI deals with the repeal of the Petroleum (Exploration and Production) Act and the savings and transitional provisions that follow as a consequence of the repeal of the law, that is the Petroleum Exploration and Production Act.

This is a Bill affecting counties and thus it will need to be considered by the Senate. The enactment of this Bill will occasion expenditure of public funds to be provided through budgetary estimates.

Hon. Temporary Deputy Speaker, I beg to move. I ask the Vice-Chair of the Departmental Committee on Energy, Communication and Information, Hon. Kiptanui, to second the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Kiptanui Jackson, Member for Keiyo South.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Speaker. I wish to thank the Deputy Leader of the Majority Party for moving this Bill. I stand to second it. As she has said, this Act will give effect to the relevant Articles of the Constitution in so far as they apply to upstream petroleum operations.

As a Committee, we have held discussions with the CS in charge of Petroleum and Energy, the civil society and other stakeholders. As we move towards the Committee stage of this Bill, we will be coming up with more amendments as a Committee. I want to believe that by then, some of the issues which have been raised by stakeholders will have been clarified.

In seconding this Bill, I want to address myself to three key issues. One is the issue of permits and licences in relation to red tape. This Bill has a number of permits and licences that are required for one to venture into the business of petroleum. The Committee is proposing that we need to reduce the number of licences and permits. In fact, there are over 30 permits and licences. You need a licence to drill, to close a well, to plug a well and to do anything else. We propose that these licences and permits be reduced. It is very interesting that the drafters of this Bill thought that for you to even close a well in case of an emergency, you must get a permit. You might not have the time to seek a permit in case of an emergency. We shall be recommending some amendments to that.

We are also proposing as a Committee that once you apply for a permit or licence, the time taken by the CS, or the relevant authority, to approve the application must be stipulated in this Act. There is no way you can apply for a permit and it takes the CS more than a month or two. Depending on the mood of the CS, you may not even get that licence. Therefore, we propose some time frame upon which a permit must be issued.

This Bill has quite a number of proposals when it comes to fines and penalties. If you violate some provisions of this law, there are penalties and fines which will be imposed. There are proposals from the sector that some of the penalties are excessive. This Bill provides that if you violate any of the provisions of the Act, you will pay a minimum of a specific amount. Clauses 49 and 55 provide for a minimum of Ksh10 million. As a Committee, we propose that we need to be very clear and set the maximum limit that you should pay if you fail to comply with the provisions of this law. Instead of being given the minimum, you should know what the maximum amount is. If you say minimum of Kshs1million, you can be told to pay Kshs100 million on the upper side. We are proposing that we need to have a maximum limit for penalties.

Hon. Temporary Deputy Speaker, there is a proposal in Clause 12 of the Bill that seeks to establish the National Upstream Petroleum Advisory Committee. It outlines the composition of that committee. This committee will comprise eight members. It is not very clear how the issue of gender will be taken care of. If you go through the list as it is now, you will realise that the Attorney-General, the Principal Secretary in charge of Treasury, the Director-General (DG) of the National Environmental Management Authority (NEMA), the Commissioner-General of Kenya Revenue Authority (KRA) are all men. We should come up with proposals to ensure that women are also included in this committee.

In line with that, issues to do with regional balance need to be taken care of as well. If you go on with this proposal, out of the eight members who have been proposed, five are from one region. Therefore, even as we pass this draft, we must ensure that this Bill takes care of our women, people living with disabilities, and issues to do with regional balance.

Clause 17 of the Bill, in the formation of board of directors of the authority, has proposed that the chairman of that board must have a degree in Engineering, Physical Science, Law, Finance, and Economics and Energy. We are leaving out quite a number of other learned Kenyans who have done other courses. We are proposing introduction of a section that if you do not have the above degree, you can have any other relevant degree so long as you have experience in the field of petroleum.

With regard to Clause 18 of the Bill, there is a very good proposal on the terms of office for the chairperson and members of the board. It is proposing that the chairperson will serve for four years. He will be eligible for reappointment for another term. For the board members, they will serve for three years. There is a very good proposal which we should borrow and carry over to other Bills and boards; the members of this board shall be appointed at different times, so that their expiry of their terms of office shall fall at different times. This will solve the challenge of continuity and succession. There is a good proposal to stagger their appointment, so that they do not leave at the same time.

As I finalise, Clause 85 proposes how petroleum revenue will be shared between the national Government, the county government and the local community. This formula will be applied when it comes to the Mining Bill, the Petroleum Bill, the Energy Bill, and any other Bill which will touch on communities. The proposal is very good. If Turkana, where we have discovered oil, they are getting Kshs10 billion per year from the Government under the Commission on Revenue Allocation (CRA) formula, there is an interesting proposal that -

“Provided that the amount allocated in accordance to this sub-section shall not exceed twice the amount allocated to the county government”.

This means that now that we have oil in Turkana, if we are giving them Kshs10 billion from Treasury and oil has been discovered, you will be required to give Turkana another Kshs20 billion. Therefore, Turkana will be getting Kshs30 billion per year. We need to relook at this. This is because one county could be benefiting from a natural resource yet there is a neighbouring which county is not benefiting. When you give one county three times the amount they receive from the national Government, it might not be very fair. We need to relook at that.

Finally, I would like to thank you. I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I will give the Floor to the Hon. Member for Rarieda, Hon. (Eng.) Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this Bill. As it has been rightfully put by my good friend, Hon. (Dr.) Naomi Shaban, this Bill seeks to give a legal framework to the provisions of Article 69 of our Constitution, and to some extent Articles 70 and 71.

Hon. Temporary Deputy Speaker, if you allow me, I would like to take you through memory lane, and share with House memories of a trip I was privileged to make as a Member of the Departmental Committee on Energy, Communication and Information during the last

Parliament to the Federal Republic of Nigeria in 2012. Historically, Nigeria and Algeria, two countries of Africa with almost the same name, discovered oil almost at the same time. But as we speak, Nigeria is being used more as an example of how not to exploit petroleum resources as opposed to Algeria, which is a study case in optimal use of petroleum resources. This should be a warning to us to get it right the first time.

Exploitation of petroleum resources starts with upstream operations where you look at the multinational companies, which do exploration, mining and extraction of petroleum resources. Then you go to mainstream operations, the refineries, and the downstream where you look at the outlets and see if the people can afford the petroleum resources. If we cannot get that chain right, particularly at the upstream operations, then we will have started on a very wrong foundation. This is because the realm we are getting into where Kenya will be a petroleum producing country, the key issue is to get those who are concerned with the upstream operations to get it right.

With that background, the proposal in the Bill, which is to develop a clear national upstream petroleum policy, is a key starting point in ensuring optimal and beneficial exploitation of petroleum resources of our country. The national upstream petroleum policy will include the upstream petroleum strategic plan and ways to monitor that plan, the conduct of upstream petroleum operations, and the promotion of upstream petroleum investment.

I have looked at this Bill and, just like in most of the Bills we have done--- I do not mean to demean anybody, but I am talking from the point of view of the realities. I have looked at the way this Bill has been proposed and, the Cabinet Secretary has been given too many powers. If you look at this Bill at Clause 12, and see the powers that have been given, I think this is where we get it wrong. When you look at the appointment of the Petroleum Advisory Authority (PAA), you find the finger prints of the Cabinet Secretary (CS) in almost everything that will be happening here. In my view, this is not right. In our system now, the CSs are not the equivalents of Ministers we used to have before; those were elected leaders. You have for example heard it when we made an attempt to impeach a CS here. He said, for the entire world to hear, that he did not see why he should worry about impeachment by Parliament. As far as he was concerned, he was appointed by the President and, therefore, he was not answerable to Parliament. When we have people with that kind of attitude being given too many powers, people who in their hearts and minds ultimately think and see themselves as only reporting to an individual; people who are not the representatives of the people, we will have to look at the powers that this Bill donates to the CS. In my view, these powers are vast.

If you look at Clause 10 and the powers given to the CS, it is like you are creating the President of oil in a country. If you look at what some oil ministers in other countries have done, the Umaru Dikkos of this world, these were powers unto themselves. In a space of one, two or three years, using these powers that are too many, they had amassed too much wealth at the expense of the rest of the citizenry. We do not want to go that route.

If Kenya must learn something, it is that we must completely avoid the oil curse, starting from this legal framework. The oil curse will be avoided if we get our aptitude operations right.

I have looked at this Bill. Look at Clause 12 on the National Upstream Petroleum Advisory Committee; it is a committee of civil servants, yet we know that some of the key players in oil and gas are non-state actors. Where is the role of people outside the Civil Service in this? We are just making this thing the topic and it is not even that. Look at even the composition of the Upstream Petroleum Regulatory Authority under Clauses 16 and 17. It has

vast responsibilities. If you look at the responsibilities of this body under Clause 17, they are so many. It can do almost anything within the petroleum sector.

But, who are the members of this Upstream Petroleum Regulatory Authority? The membership is the chairperson who is appointed by the President, the CS responsible for energy and petroleum, the CS for the National Treasury and then the Director-General. Then, there is a provision there which says: "Five other members appointed by the CS," yet there is no procedure or nothing for that sort. This House and the representatives of the people have no role, whatsoever. Are we not creating problems? What have we learnt from what is happening in the Niger Delta, if we can give an appointee of the President, somebody who is not a representative of the people, these many powers?

This is a very important Bill. I request my good friend, Hon. Naomi Shaban, that we do not rush the Committee Stage of this Bill. Let us give Members enough time to tooth comb this Bill; if we do not get this Bill right, you will be seeing what you see in the Niger Delta. Today, if you overfly the Niger Delta in Nigeria, you will see floating dead bodies. It is like a part of the world that the gods forgot. Kenya does not ever wish to go in that direction.

I am happy with the provisions on environment and health safety (EHS). Even as we look at these provisions on EHS, let us uphold transparency in the exploitation of petroleum resources in this Bill as we come to the Committee Stage. I expected a clause dedicated to transparency in exploitation in this Bill. Without transparency--- The moment we encapsulate everything in the exploitation of these resources in opaqueness, we are not going to have it right.

As I conclude, I will just request one more minute. I attended a conference in Tanzania recently. After I spoke, one of the Tanzanians told me that you Kenyans are doing very well. You have the wealthiest person in East Africa, but you also have the poorest person. That is not the label that we want to carry. We still have a problem. Exploitation of petroleum resources can help us to bridge this gap. Kenyans will be much better for it. We cannot all be equal, but if we can reduce this gap between the wealthiest person and the poorest person, we will not need to spend more money buying armoured cars, guns or equipping our armed forces, because the people whose numbers are growing exponentially, will be the security we need.

So, I support but I give the caveat that I will be proposing a plethora of amendments, so that we make this Bill contemporary to the needs of our country, and so that we prove that we have learnt from the mistakes of other countries.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu: Very well said. Hon. Iringo.

Hon. Kubai Iringo: Hon. Temporary Deputy Speaker, thank you for giving me this opportunity to contribute to this Bill. I believe it is one of the Bills which we are trying to enact so that we can actualise our Constitution. It is also one of the Bills which will take this country in the right direction as far as industrialisation is concerned.

The Bill is quite voluminous. I support Hon. Gumbo that as we debate this Bill, we have to be critical of the same and look in detail at every clause, so that we do not regret or come up with amendments when it will be too late.

First and foremost, I support the Bill because it is giving us the framework of how we should handle the petroleum industry which is already a new product in our country since Independence or time immemorial. We have started discovering oil and in the process, we have to put in place a framework for how we are going to handle it. We should be careful not to go the direction of other petroleum producing countries, where after discovering oil, instead of that oil

benefiting the citizens of those countries, it has brought anarchy, acrimony and even war or mismanagement by cartels who become goons that sell the oil at the expense of citizens.

This framework will repeal the old law and I appreciate it because it is a bit shallow. We did not have oil by then. We have also not invested as much as we have done this time in exploration of oil. With this framework, once we start producing oil and in the process of trying to refine it, the laws which we have put in place here should guide us towards the right direction. We have already started the exploration of oil and thank God we are getting good results, especially in the northern part of our country. All precautions must be put in place. This Bill has also provided for how the environment will be conserved, how the disposal of the byproducts will be handled and how the environment will be rehabilitated after exploration.

We have many mining programs going on in Kenya like the Bamburi and Athi River projects, where there is a lot of pollution. There is also a lot of excavation being done and at the end of the exercise the areas are left open and become environmentally dangerous. We have pools of water and dams where people drown.

This Bill has provided that a contractor, or an investor, in the exploration of oil has to restore the same land to the best state possible environmentally, so that it does not affect people, flora or fauna of that particular area.

Hon. Temporary Deputy Speaker, Clause 16 talks of the contractor's powers and what he needs to do. There are some clauses which I feel should be amended when we get to the Committee of the whole House, so that they are balanced, conform to the Constitution and do not hurt any part of the environment.

There is the issue of the people to be in the advisory committee. As my colleague has pointed out, most of them are civil servants. This one should be looked into, so that we can have people from the private sector. We have very good brains out there who could be incorporated in this, and they may have knowledge that could assist in the provision of these services.

We must also be very careful that once we pass this Bill and go to the exploration of oil, we should not go the direction which most investors, contractors or other petroleum producing countries or superpowers would like to take us. We should not let them come and mortgage our country. We should have this law put in place with a view that it will safeguard the interests of the communities, which are within particular places where oil is discovered. It should safeguard the interest of the county where that discovery has been made. It should also safeguard the interests of our country, Kenya, so that foreigners, who have a lot of expertise, do not bring in their experts and also somehow neo-colonise us as far as this industry is concerned.

I support this Bill with a strong view that we have to critically examine it; once we go to Committee of the Whole House, we should have amendments. I will personally bring amendments which will strengthen this Bill further; as a framework, I strongly recommend it. It is a good Bill for our country.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Member for Kiambu, Hon. Annah Nyokabi.

Hon. (Ms.) Gathecha: Thank you, Hon. Temporary Deputy Speaker for the opportunity to contribute to such an important Bill that establishes a framework within which oil exploration within our nation, Kenya, will operate.

In many countries around the world, oil, which is a natural resource and a source of wealth, has turned into a commodity that has brought tears, acrimony, chaos and anarchy due to lack of proper regulation and the lack of establishment of the requisite laws that would empower local communities, ensure that the country gains revenue and ensure that the beneficiaries of the natural resources are the owners of the country and not the investors who come in to gain in all aspects.

In cities in the Middle East like Dubai and other nations, you can see the benefits of having oil. But when we take a look at some of the countries within Africa that have oil, all we hear about are mercenaries, who are hired to protect pipelines because local communities are blowing them up or siphoning off oil simply because they do not benefit. This framework will give us a guideline, or a starting point, within which we will begin to operate as a country and ensure that we maximise the benefits of having oil; we will ensure that we, as a country, benefit from it.

I specifically want to address the issue of establishment of an upstream petroleum advisory committee. The issue of upstream and downstream operations in oil drilling and exploration prevents locals from investing in opportunities that can create a significant value chain that can be operated in. Currently, what is in existence is very punitive for Kenyans. When you look at the amount of funds that are required upfront in order to operate, you will see that one million dollars is required just to get space within the oil pipeline. It is truly out of reach for local investors. You are giving this money to an organisation to hold on to but you cannot utilise any of your capacity during that time. The frustration that local participants face in the upstream operations ensures that when offloading comes, they are harassed and asked to evacuate their oil within three to four days. This is next to impossible because it takes at least four to five days to just offload the product from the ship.

When we address this in the Committee of the whole House, I hope that we will ensure that we have a refinery that is operational, so that we do not do what most of the international agreements would want us to do; this is to extract a product from the ground in raw form and export it to developed countries, so that it can be refined and then we re-import and utilise it. Given technology, I know it is a big expense in terms of the investment required, but since the fastest growing economies in the world are no longer found within North America or Europe but within Africa, it will make sense that we, as an economic region within the East Africa Community, ensure that we have a refinery where we are able to manufacture and process our products.

We should also ensure that a bigger preference is given to local production and development of engineering facilities by ensuring that we strengthen the institutional capacity within this country; when we talk about technology transfer, which is a significant part in this Bill, we should take it and domicile it institutionally. By institutions, I mean the universities that we currently have. We know that if we are going to grow this country, and if the 11 million unemployed youth in this country are going to find jobs, it is important that we strengthen Part IV of this Bill on local content and training to ensure that, that is actually domiciled within the leading national universities, and so that when we get into agreements with these companies, they will come in and build a full department of petroleum within the institutions. This will actually ensure that we will have true technology transfer; research and development facilities will be developed in this country to ensure that we take advantage of our resources, and that they

enable us to strengthen and ensure that our youth get the right skills and become employable internationally.

When we take a look at some of the agreements that we currently have, when it comes to technology transfer, you will find that some of the organizations that we get into agreements with will do technology transfers, but they give us manuals that are in a language that we cannot decipher. We will be given a trainer who does not speak English; thus technology transfer becomes useless in other sectors. If we do not speak the same language, and if trainers speak another language, all of a sudden, it becomes an issue where the Government is held at ransom by individuals or international mercenaries, who are not interested in the development of this country but in extracting what is currently within the country and not benefiting the country.

Hon. Temporary Deputy Speaker, on the local content and training, Part III, without limiting the generality of Part II, local content plan shall address employment and training, research and development, technology transfer, industrial attachment and apprenticeship, legal services, financial services, insurance services and succession plans.

I would like to add my voice to the concerns that have been raised by my fellow speakers in the area of concentration of power on Cabinet Secretaries. They are not the Ministers who were there before, and who were representatives of the people. It is important that these individuals are not just--- Currently, some tend to think that they got their positions on their own and have no obligation or responsibility to this country except extraction of self benefit. This country is growing and I am sure we will be at a projected population of 70 million within a very short time. In order for us to develop, and for the resources to be evenly distributed to all members and parts of this country, those who are put in areas of responsibility need to understand that they are there to ensure that the country benefits but not individual empowerment. I must laud the President for his instruction that lifestyle audits be carried out on those who have been put in positions to ensure that they do revenue collection for this country.

This Bill is a start and one that needs to be strengthened; the same should apply to members of the petroleum industry who should be participants. We should get the best practices around the world in this area, so that we can develop our country. Dubai was a place of *manyattas* a few years ago, but right now it is the epitome of success in investment in the oil sector using its natural resources. We hope that this Bill will help us address those particular issues to ensure that Kenya remains at the forefront, and at the top in terms of development within Africa.

With those remarks, I support.

Hon. Nakara: Hon. Temporary Deputy Speaker, thank you for allowing me to contribute to this Bill. From the outset, we want to be counted as one of the countries that have prepared for the blessings that God has brought to this country.

Although we have seen the Bill, good as it is, there are some things that we need to address. The impact that we get through exploration of oil in our country--- If you read the history of the countries that have discovered oil, most of them are very poor. We need to put in place a strategy on how we can develop those areas which have discovered minerals or oil, and how to improve their standards of living and make them developed. We need strategies.

We need to deal with corruption because when we discover oil in this country, we will have many resources. We need to put in place measures on how to deal with corruption, so that when we get resources from petroleum, we will know how to use them well. If you look at the countries that have discovered oil, many of them are fighting internally. A good example is the

UAE. Those countries are fighting, including South Sudan, because of oil. We need to put in place measures on how to counterattack negative impact. As much as we need to have this law, we also need to have measures on how to avoid war between tribes in Kenya, communities or clans within regions.

Hon. Temporary Deputy Speaker, it is being said that we need to see the movement of people. How can we counterattack the movement of people from other areas to the areas within a locality or from outside the country? We need to put measures in place on how we monitor the movement of people.

I will now go directly to the Bill. On the side of information and reporting, Part V of this Bill, before we give information on discovery to other entities or other persons, we must break the news to the local community. They must be told what has been discovered in their county. A good example is that I am from Turkana County. When oil was discovered in Turkana County, we did not even know that we had such a resource in Turkana. We only heard about through the social media and announcement from the President. Let us go down to the locals and break the news to them first before we do it at the national level. That is an area where we need to make sure that we inform people about what is in their counties. It is breaks your heart when you do not get information but hear it from other parties instead of the person closer to you. That is an area that must be improved, so that our people can get informed as this will make them feel they are owners of such resources.

On the issue of local content and training under Part Part VI, we are talking about goods and services. On local content, we must make sure that the services we are giving are first found within the locality where that resource is. We will then extend them to other counties. We also have goods from that local area. We need to encourage the contractor to get local goods locally before we go to Nairobi or outside the country, so that we promote the economy of that particular local community. For instance, we have chicken; why come Nairobi to buy eggs yet we have eggs in local areas? We need to make sure that local content that we are talking about in Part VI will be considered as goods from within counties, so that we can promote the economies of counties.

Hon. Temporary Deputy Speaker, the issue of local content also involves jobs. I have no problem with Kenyans in general. I am not a tribalist; I am a Kenyan. We have to divide into percentages the jobs available to the locals, other Kenyans and expatriates. There are some communities whose people have not gone to school. So, we need to divide into percentages the jobs available. What percentage will go to the locals and what percentage will go to other Kenyans? What percentage will go to expatriates? If you do not get it right now, the locals will fight and ask questions? That is why it is important that this Bill considers such a situation. Some communities may not have training but because the resource is in their area, we must consider giving them some jobs that they can do instead of bringing even cooks from outside the locality, yet the local people can do that job. We want to emphasize the local content.

On the issue of training and development----

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Turkana Central, you will have your three minutes when the Bill is next debated. You should prepare for the next sitting adequately.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members of Parliament, the time being 6.30 p.m., this House stands adjourned until Tuesday, 27th October 2015, at 2.30 p.m.

It is so ordered and I thank you all.

The House rose at 6.30 p.m.