

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 8th March, 2016

The House met at 2.30 p.m.

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

PRAYERS

PETITIONS

MEDICAL MALPRACTICES BY MEDANTA AFRICARE HOSPITALS

Hon. Speaker: Hon. Members, I wish to convey this Petition of alleged medical malpractices by Medanta Africare Group of Hospitals.

Hon. Members, Standing Order No.225(2)(b) requires that the Speaker reports to the House any petition other than those presented through a Member. I, therefore, wish to convey to the House that my office is in receipt of a petition from one Brian Onyango regarding alleged irregularities at a private health facility.

The Petitioner alleges that Medanta Africare Group of Hospitals has been establishing hospital units across the country using local medical experts after which the said hospital institutes criminal charges against the local experts and subsequently terminates their services. The Petitioner further alleges that the said private hospital has been referring patients to its partner hospital, Medanta India, for ailments that can be treated locally. He alleges that the objective of such referrals is to defraud the NHIF Scheme and unsuspecting patients of approximately US\$2,000 per patient to cover medical expenses.

The Petitioner, therefore, prays that the National Assembly investigates the matter and recommends appropriate action against the said health facility and its accomplices.

Hon. Members, pursuant to the provisions of Standing Order No.227, this Petition stands committed to the Departmental Committee on Health for consideration.

I thank you.

Hon. (Dr.) Pukose: Thank you, Hon. Speaker, for that Petition. I followed it very keenly. It is an important Petition. About a month ago, I saw the Chairman of the Kenya Medical Practitioners and Dentists Board (KMPDB) on television admitting that he had also been approached. Healthcare is a very important and critical part of human life. Any health facility offering services must offer it within the legal framework and professional etiquette in which it is established. That is important.

We have been seeing in the social media one of the principals got very serious injuries. I am hoping that our local hospitals can attend to him. We wish him a quick recovery because the injuries he sustained, when you look at the social media, look very severe. I was asking my colleague, Hon. Chris Wamalwa, whether he had paid him a visit in hospital. If he is still in

hospital, he can invite us to accompany him so that we go and wish him quick recovery because he is a very important leader.

Hon. Speaker: Who is it?

Hon. (Dr.) Pukose: It is Hon. Moses Wetangula, Hon. Speaker.

Hon. Speaker: I thought you talked about a principal.

Hon. (Dr.) Pukose: No. It is Hon. Moses Wetang'ula. He is one of the CORD principals. We heard that he was severely injured over the weekend in a domestic attack. We wish him quick recovery.

Thank you. We need to take up this matter.

(Laughter)

Hon. Maanzo: Thank you, Hon. Speaker. That Petition is very important. I want to support it. Matters of health are very important. When people are sick, they are very easy to con. We need to interrogate, as a Parliament, whether we can strengthen the law but ordinarily doctors are supposed to be very professional because they are supposed to take care of us when we are unwell.

It is true that a lot of money is involved through insurance schemes. In fact, we have cases where people have gone to India and come back worse. In the area of medical negligence, it is very difficult to try a doctor because you are likely to fall sick and find the same doctor. I urge the Committee charged with this to do the best. We are willing to go and assist so that we can have a good report that can help the country and protect citizens.

Thank you.

Hon. Bowen: Thank you, Hon. Speaker. I also want to voice my concern about this Petition. I have a case concerning one of my constituents. Some hospitals ask patients' relatives to go and donate blood.

During blood transfusion, you will find that the patient is given two or three pints and yet five or six relatives donated blood. The hospital sells the remaining pints. I was to come up with such a Petition but now that it is related to that and the Chairperson of the Departmental Committee on Health is here, it is a very serious issue which we need to look at.

I support the Petition.

Hon. Ng'ongo: Thank you, Hon. Speaker. I also want to support the Petition and say that the practices that we see currently in most hospitals are worrying. The kind of unprofessionalism with which hospitals nowadays treat not just staff but even patients is worrying. I am sure many of us read this story about our local hospitals referring patients to India for treatment, even those who can receive proper treatment locally. I urge that the Committee looks deeper at the ethical and unethical practices that these hospitals get involved in.

Lastly, I am worried. This may touch not just on the health profession or the Committee that is dealing with health matters but even the Committee that is responsible for education. I am worried that probably the quality of some of the doctors that we produce in this country is wanting.

The mushrooming of universities, if not checked, is going to endanger the lives of citizens of this country. We need to check the universities that are coming up and are offering training in medicine. We should be sure that they qualify to offer quality education in medicine

because medicine is not any other profession. It is important that this matter is looked into so that we are sure that we are getting doctors who come from well equipped universities.

Thank you.

Hon. Speaker: Finally, let us have the Member for Seme.

Hon. (Prof.) Nyikal: Thank you, Hon. Speaker. I support the Petition. There is a serious problem in the country with regard to referral of patients abroad. To begin with, it is not always that whenever a person is referred, he or she is likely to benefit. We are realising, as a country, that we have organisations that do not have proper medical backgrounds. They are agents of transferring patients.

Many times, you will find that patients make arrangements to be transferred and their doctors sometimes become mere passengers in seeing how they are going to be referred. This is the case and yet nobody has made consultations with the doctor or the institution abroad. It is not guaranteed that what the patients are going to get will help them.

If you look at data, you will realise that most patients who go out do not get better when they come back. The other worrying bit is why patients are going to India in particular. It beats logic that two people will get two tickets, fly to India, hire hotel to stay, get treatment and come back. This is the case and yet we still feel that this is cheaper than what is charged in this country.

The other area that we need to look at is the pricing of medical services. I support this Petition. On the day that the Committee will be looking at it, I offer to be in that meeting, find out the facts and assist.

Thank you.

Hon. Speaker: Finally, let us have the Chairperson of the Committee although the Petition is coming to your Committee.

Hon. (Ms.) R.K. Nyamai: Thank you, Hon. Speaker. I would like to thank the Petitioner and say, as other Hon. Members have expressed, that for sure this is a matter of concern that has been raised severally within our Committee. It is good that a Kenyan has decided to raise this matter as a Petition. It is true that there are a lot of malpractices within the health sector in this country. There are also referrals that are meant to benefit each other and mushrooming of institutions that seem to be a network for making referrals. This is coming as a result of the fact that there is a problem within the health sector. So, I would like to assure the House that the Departmental Committee on Health is going to look at this matter, together with all the prayers that have been raised by the petitioners and any other matter that may be relevant.

Thank you, Hon. Speaker.

Hon. Speaker: Of course, the matter is to be reported within the usual period of 60 days. Hon. Njagagua, do you have a Petition?

DONATION OF LAND TO NGIIRI SQUATTERS

Hon. Njagagua: Thank you, Hon. Speaker. With me this afternoon is a Petition signed by 265 residents of Ngiiri market.

I, the undersigned, on behalf of concerned squatters of Ngiiri market in Mutitu Location in Mbeere North Constituency, Embu County, draw the attention of the House to the following:-

THAT, Mbeere North Constituency hosts a vast land belonging to Tana and Athi Rivers Development Authority (TARDA), part of which is occupied by Ngiiri Market;

THAT, the land has for a long time been the pillar of economic mainstay of the residents of Ngiiri Market and its environs;

THAT, in early 2000, the management of TARDA undertook to cede part of the land to public utilities in Mbeere North Constituency as follows: 160 acres for Ngiiri Complex School, 50 acres for Ngiiri Primary School and an unspecified acreage for public use for Ngiiri Market;

THAT, in May, 2015, and in a surprise turn of events, the TARDA Managing Director made a public announcement that the institution would only cede 20 acres to the public for Ngiiri Market and was silent about the 160 acres for Kiambere Complex;

THAT, considering that Ngiiri Market has been experiencing huge influx of traders over time, with its current population estimated at over 1,000 residents, the proposed allocation of 20 acres for Ngiiri Market is insufficient and may not accommodate the number of traders and public utilities like a police station and a chief's office;

THAT, the residents are concerned that the uncertainty created by TARDA could create a loophole for selfish individuals to take advantage of the situation and irregularly allocate the land to themselves through unscrupulous and underhand dealings;

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Lands:-

1. As a matter of urgency investigates the circumstances under which the size of the said land keeps varying, with a view to ascertaining the actual size of land being ceded to Ngiiri Market, Kiambere Complex School and Ngiiri Primary school by TARDA;
2. Liases with the relevant State agencies to stop all land transactions in respect of TARDA land in Mbeere North Constituency until the certainty of the acreage of land promised to the residents of Ngiiri Market and public facilities is safeguarded and transferred to genuine beneficiaries; and,
3. Makes any order and/or directions that it may deem fit in addressing the plight of Ngiiri Market squatters.

And your Petitioners will forever pray.

Thank you, Hon. Speaker.

Hon. Speaker: Yes, Hon. Chrisantus Wakhungu.

CANCELLATION OF 2015 KCSE RESULTS

Hon. Wakhungu: Thank you, Hon. Speaker. The name is a bit long.

Hon. Speaker: Hon. Members, you see the names sometimes appear in full. You have many names. There is Hon. Chrisantus Wakhungu Wamalwa.

Hon. Wakhungu: Thank you, Hon. Speaker. As I bring this Petition, my humble request, in line with Standing Order No.226, is that you allow a few Members to ventilate on it.

Hon. Speaker: Hon. Wamalwa, that is not your business. If you started directing me, I would cease being your Speaker.

Hon. Wakhungu: Thank you, Hon. Speaker. My Petition is by concerned parents regarding the cancellation of the 2015 Kenya Certificate of Secondary Education (KCSE) results.

I, the undersigned, on behalf of concerned parents from Trans Nzoia County would like to draw the attention of the House to the following:-

THAT, Article 35 of the Constitution provides that every citizen has the right to access to information being held by the State;

THAT, on 3rd March, 2016, the Cabinet Secretary for Education, Science and Technology released the KCSE results;

THAT, results of certain schools were cancelled and a total of 64 from 14 national schools were among the 5,101 candidates whose 2015 KCSE examination results were cancelled over alleged malpractices;

THAT, further a total of 2,538 candidates who were alleged to have cheated were from 150 sub-county schools, 1,817 were from 56 county schools, 512 were from 56 private schools and 170 from 29 private exam centres;

THAT, the methodology that was being used to cancel the said results is not clear;

THAT, the matter presented in this Petition is not pending before any tribunal or court of law.

Therefore, you humble Petitioners pray that the National Assembly, through the Departmental Committee on Education, Science and Technology:-

- a) Identifies the criteria that was used to cancel the said results;
- b) Inquires into measures being taken against the Kenya Examinations Council to deter such practices since they are the custodian of the exams;
- c) Establishes how long it is going to take to resolve this matter, including stating the way forward for the affected students because it is bringing a lot of stress and torture to the parents and even to the said schools;
- d) Makes any order or direction that it will deem fit in the circumstances of this case.

And your Petitioners will ever pray.

I thank you, Hon. Speaker. As I requested, I know you are a very listening Speaker. Please allow a few Members to ventilate.

I thank you.

Hon. Speaker: Hon. Wamalwa Wakhungu, you do not have to request me. Your own Standing Order No. 226 says very clearly that the Speaker may allow Members to comment, make observations or seek clarifications on a petition, only that the period for such shall not exceed 30 minutes. So, you do not have to ask me. You expect that your Speaker should know matters of national importance. A matter dealing with cancellation of results of 5,000 candidates is a matter of grave importance.

I want to know whether these Members who have put their cards for intervention want to comment, observe or seek clarifications on the Petition and not on other matters.

Hon. Asman Kamama, you have the Floor.

Hon. Abongotum: Thank you, Hon. Speaker. First, before I contribute on this very important issue raised by Hon. Chrisantus Wakhungu Wamalwa, I got some instructions about a week ago from you that we should expedite consideration of the Petition by Hon. Sabina Chege on behalf of the family of the late Stephen Mbi Kieru, on the compensation for the death of their breadwinner as a result of a terrorist attack.

After consulting, the Directorate of Legislative and Procedural Services, I found that this matter was referred to the Departmental Committee on Justice and Legal Affairs. Therefore, I request that this Committee expedites this matter because it is grave and it has taken time from July, 2014.

Hon. Speaker, having said so, allow me to also comment on the same issue that was raised by Hon. Wamalwa. Cheating in examinations is a matter of grave concern. Cheating in national examinations has become very rampant. The Government must take decisive action on

those who are promoting the malpractice. I know that Hon. Wamalwa represents the people of Trans-Nzoia County. We will request the Ministry and the Committee concerned to investigate the matter and take appropriate action. I would also like to request the Ministry to be merciless on schools, head teachers, respective subject teachers and invigilators who engage in cheating. There is a connection between invigilators on one hand and teachers of specific subjects and the school administration on the other as far as cheating in national examinations is concerned.

I support this petition and the instructions given by the Deputy President about three days ago to the effect that the Ministry should take one month to come up with strategies for resolving this matter once and for all. It has become an issue in almost all parts of the country. The social media has complicated the matter of cheating in national examinations. Nowadays people use *WhatsApp* and *Facebook* to access national examination papers.

Hon. Speaker: Hon. Members, be alive to the fact that comments, observations and clarifications on a petition by all Members cannot exceed 30 minutes.

Hon. Abongotum: Hon. Speaker, therefore, I support the petition. I request the Ministry be merciless on people who cheat in national examinations.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. John Mbadi.

Hon. Ng'ongo: Thank you, Hon. Speaker. While I support the petition by Hon. Chris Wamalwa, I want to add that when the education system in a county is messed up, it affects the generations that follow. If there is any institution that needs reforms, it is the Kenya National Examinations Council (KNEC). As a starting point, the Committee should recommend reorganization and cleaning up of the KNEC. The people serving in that body have either become complacent or there is a problem with them in terms of keeping pace with technological development. Let us just face it and admit that we are not sure of the authenticity of the results of last year's examination that were released the other day, following which people started celebrating. If it could be confirmed that genuine national examination papers were leaked and shared out through *WhatsApp* and other ICT platforms but candidates throughout the country proceeded and sat the same examination papers and produced result, after which some candidates were classified as having failed while others were classified as having passed, we are not being fair to the future generation of this country.

In my view, we need to do away with the current KNEC. We need to put in place a new team – a team which can deliver. Some of us are here courtesy of education. If it was a matter of our history or parents, we would not be where we are today. If we went through such a confused system, where people who are not very intelligent pass national examinations and those who are intelligent and want to do exams with credibility end up losing, some of us would not be here today.

Finally, as a country, we complain about corruption. Recently, the President talked about it, though I did not agree with the forum he chose. He should have said it here. The truth is that there is corruption in this country, but it cannot be eradicated if young people in Form Four are trained to believe that they can only pass national examinations through cheating. How then do you tell them to avoid corruption? Therefore, the Committee should come up with clear recommendations. First of all, they should do away with the KNEC. Some of those people have overstayed. They have been in that body for far too long.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Mbadi, the only matter that I thought could raise eyebrows was when you said that some of you are here, courtesy of education. I thought the provisions of Article 99 of the Constitution, which is on qualifications required for one to vie for a parliamentary seat are amongst others, that such level of education has to be prescribed in an Act of Parliament, which level was prescribed in Section 22 of the Elections Act, 2011. I was wondering whether some of you, and not all of you, are here courtesy of education. I will leave that to Hon. Mbadi.

(Laughter)

Hon. Ng'ongo: Hon. Speaker, I said---

Hon. Speaker: Hon. Mbadi, you said that some of you are here, courtesy of education. Next on my request list is Hon. Washiali.

Hon. Washiali: Thank you, Hon. Speaker, for giving me the opportunity to comment on this matter.

I would like to thank Hon. Chris Wamalwa, who is my counterpart in the Minority side of this House, for bringing this Petition to the House. My Constituency is a victim of cancellation of results. We have two schools – St. Michael's Makhwale and Lubinu Secondary School – with a total of 105 students, whose results were canceled. We are talking about the future of the students in those schools. I believe that we pay teachers to teach and not to assist students get funny results.

Last week I went to the KNEC Headquarters to find out the reasons why our students got “Y” results. I was told that they received the results because of collusion. I did not understand how collusion would have caused students to miss their results. That reminded me the reason why the Ministry is not ranking students. How would you not rank students on one hand and on the other hand fail to release the results of others? I would like to request the Departmental Committee on Education, Research and Technology to go deeper and investigate all the departments under the Ministry of Education. The people who may have played a major role in this scam are teachers. In order for us, as a country, to be able to eradicate cheating in national examinations, the Ministry should come up with a mode of punishing teachers whose schools get involved in this malpractice.

Thank you, Hon. Speaker.

Hon. Speaker: Yes, Hon. Nyikal.

Hon. (Prof.) Nyikal: Thank you, Hon. Speaker. Whereas I support the Petition, quick investigations should be carried out with a view to finding a criterion for dealing with this matter in order to alleviate the suffering that some students go through when their results are cancelled. The bigger issue, as Hon. Mbadi has said, is whether the KNEC is capable of sustaining the integrity of national examinations. That is the question. Irrespective of who else are involved, the first leakage must have come from the KNEC itself. Therefore, the question that this country is faced with is whether we can believe in examinations conducted by the KNEC.

Hon. Speaker, I am even worried about the candidates who passed. Those of us who are mathematicians know that if you have 300 candidates and over 200 of them score grade “A” that is not a natural distribution. That is whatever population you take. My question is, were we having exams that were widely leaked? Is what we are seeing a result of people who revised exams before they sat for them? I have been a teacher at the university level and sometimes I

have been amazed at students who get extremely good passes and then when they get to the university their performance is far below what you will expect. Therefore, what I think we should do is investigate thoroughly the KNEC and find out whether this body is capable of maintaining the integrity of exams or not. That is the main issue.

Again you cannot punish students while the people who are deeply and fundamentally involved are going scot-free. For me that is where the investigation should focus on and not just finding out what criterion was used but how do exams get leaked. We saw even in the SMSs people predicted what will come in the papers and when the exams came, what was predicted was there. At that point, one would have expected that the whole exam should have been cancelled and proper exams set. I agree with Hon. Wamalwa that we must look at this thing deeply and look at the role of the KNEC in all this.

Thank you, Hon. Speaker.

Hon. Speaker: Let us now have Hon. Muthomi Njuki.

Hon. Njuki: Thank you, Hon. Speaker, for this opportunity to comment on this Petition. Of course, I want to support the Petition even though I am not worried about the criterion that was used. My biggest worry is the cancer that we are creating in Kenya. It is not even the number of students whose exams were cancelled but the number of students who cheated in their exams and yet they have results. They must be more than 5,000. Therefore, it means that in future, we are going to have cheating doctors. We are also going to have cheating lawyers and Members of Parliament. You can cheat your way into university but when you get into university, you find that education is about application. However, even there, they may have perfected the art of cheating and we end up with cheating professionals. That is the biggest problem.

In 2007, when there was election malpractice to the level that we had chaos in Kenya and the Electoral Commission of Kenya (ECK) was unable to prove who won the elections, the route we went is that we disbanded the ECK and came up with the Independent Electoral and Boundaries Commission (IEBC). I think that is the route we should go with this body that oversees examinations today. It is of no use waiting for another disaster to happen next year while we are getting shy of saying let us disband the body and create a completely different body because who is responsible for the custody of examinations? From setting, moderating, printing to administering the exam, it is normally under the custody of the KNEC. Why do we want to blame other bodies, including security when the exam leaks?

On the issue of corruption which has been mentioned very briefly, I do not want to believe students are corrupt because some parents bought papers either through *WhatsApp* or physical papers for their children. What motivated cheating was financial. When you have information or when you structure information that is supposed to be confidential and sell it for money that is corruption. That is why there is leaking of this examination. Therefore, very punitive measures must be taken to completely dissuade the people who want to continue cheating in future.

With those few remarks, I support the Petition.

Hon. Speaker: Very well. As you know, it is not debate. Before I give the last contributor to make his observations, let me recognise students and pupils from the following institutions in the Speaker's Gallery: Kairi Boys High School from Gatundu North Constituency, Kiambu County and Itongo Secondary School from Kuria Constituency, Migori County. In the Public Gallery, there is Kamukunji Secondary School from Kamukunji Constituency, Nairobi

County; Oshwal Academy, Mombasa County and Mennonite Education Centre from Kamukunji Constituency, Nairobi County. They are welcome to observe proceeding in the National Assembly.

Yes, Hon. Silverse Anami.

Hon. Anami: Thank you, Hon. Speaker. I have had opportunity to work with KNEC, and as a teacher, I have also participated in examinations at different times. You will find from the results that were released this time round that the distribution curve is not normal. So, our committee and KNEC should not have allowed the results to come out the way they came out. You will be surprised to find that there is a school which registered 250 candidates and 200 candidates got "A" (Plain) and none got Mean Grade "D", "C" or "B" (Minus). This is not a normal distribution curve. Through simple analysis of these results, we are dealing with hoax results. It is, therefore, important that this petition is taken seriously and we bring the report to this house so that we can deal with this matter once and for all before we go into another examination season.

Thank you, Hon. Speaker.

Hon. Speaker: Very well, hon. Members. The period for petition contribution is only 30 minutes. Therefore, the Chair of the Departmental Committee will have a chance to make the final observation and make an undertaking that within---

(Loud consultations)

Hon. Members, including the young Member from Kisumu City, 30 minutes is the maximum. Hon. Mirenga Ken Obura, the only time available for comments on this petition is for the Chair of the Departmental Committee.

Proceed, Hon. Sabina Chege.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Speaker. I want to thank Hon. Members for their contributions. The issue of examination leakages is very serious because it is affecting the quality of education in this country. I commit that my Committee will take up the matter and make a follow up.

As Hon. Anami has said it is alarming, looking at the results distribution curve, with a school producing 300 straight "As", although the KNEC gave candidates whose results were cancelled 30 days to visit their offices and give explanations. As a Committee we need to go further. I am also aware that there was a committee formed between the Ministry of Education, Research and Technology and the Ministry of Interior and Coordination of National Government to look into the matter. However, we will pick up the matter with the committee and report back to this house within the time given, hoping that this issue will not affect our examinations again.

As an Hon. Member has mentioned, it is really bad when we have parents buying leaked examination papers for their children. I also want to tell Hon. Members and the public as a whole that when they receive leaked examination papers and start redistributing them, it is a crime. As a nation, and the people who aid students, we need to take responsibility. Some of the culprits were arrested last year. We need to see their names published in the newspapers. We need to name and shame them because they are messing up the future of the current young generation.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, the Petition by Hon. Njagagua is referred to the Departmental Committee on Lands for them to consider and report back to the House within 60

days. The Petition by Hon. Wamalwa is appropriately referred to the Departmental Committee on Education, Research and Technology. I direct that the Petition by Hon. Sabina Chege, which had been submitted to the Departmental Committee on Administration and National Security, be re-directed to the Committee on Justice and Legal Affairs for them to report back to the House within the shortest time possible since it has already been there for a long time.

Next Order!

PAPERS LAID

Hon. Katoo: Hon. Speaker, I beg to lay the following Papers on the Table of the House, today Tuesday, 8th March, 2016:-

The Reports of the Auditor-General on the Financial Statements in respect of National Labour Party, the Peoples Patriotic Party of Kenya and the Party of Independent Candidates of Kenya for the year ended 30th June, 2011 and the certificates therein.

The Reports of the Auditor-General on the Financial Statements in respect of Progressive Party of Kenya and Chama Cha Uzalendo for the year ended 30th June, 2012 and the certificates therein.

The Reports of the Auditor-General on the Financial Statements in respect of Kenya National Congress Party, the Independent Party, the Agano Party and Grand National Union Party for the year ended 30th June, 2013 and the certificates therein.

The Reports of the Auditor-General on the Financial Statements in respect of the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA), Agricultural Finance Corporation, Prisons Farm Revolving Fund, Independent Policing Oversight Authority (IPOA) and Stores and Services – Ministry of Land, Housing and Urban Development for the year ended 30th June, 2015 and the certificates therein.

Thank you, Hon. Speaker.

Hon. Speaker: As a matter of interest, although, I do not see the Chairperson or Vice-Chair of the Departmental Committee on Justice and Legal Affairs, it is surprising that we are getting the Reports of the Auditor-General on the Financial Statements of Political Parties or bodies that purport to be political parties for the year ended 30th June, 2011, 2012, 2013 and 2015. We do not even see some of them. How do they survive? Do they maintain the minimum 24 branches countrywide?

The Departmental Committee on Justice and Legal Affairs, which is the Committee that oversees the Registrar of Political Parties I think this country needs to be saved from some of these unnecessary appendages purporting to be parties. If you look at Article 91 of the Constitution, you will find that a party is supposed to have a national outlook, which is defined in the Political Parties Act as having not less than 24 functional branches countrywide. We are almost at the period when some of these outfits will begin running around here; people with briefcases pretending that they have been operating all along.

This House, through that Committee, will do this country great service if it could establish whether these things are really living or some of them may have been buried. The Departmental Committee on Justice and Legal Affairs, try to find out whether these things exist. I am sure when the 10th Parliament made these provisions in the Political Parties Act they were meant to be serious business, but since 2011 and 2012--- Anyway there is nothing to comment on but to just ask that Committee to help the country.

Hon. Amina Abdalla, you have the Floor.

Hon. (Ms.) Abdalla: Is this on Papers to be laid on the Table or commenting on political parties debts?

Hon. Speaker: No, you are shown to be tabling something.

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to lay the following Paper on the Table of the House today Tuesday, 8th March, 2016:-

The Report of the Mediation Committee on the Mining Bill (National Assembly Bill No.9 of 2014).

Hon. Speaker: Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT ON MINING BILL

Hon. Speaker: Hon. Amina.

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on the Mining Bill, 2014, laid on the Table of the House today, Tuesday, 8th March, 2016, and approves the mediated version of the Mining Bill (National Assembly Bill No.9 of 2014).

Hon. Speaker: Hon. Ken Obura, what is your intervention about? You are currently occupying the position of the Leader of the Minority Party.

Hon. Mirenga: Yes, Hon. Speaker. I had an intention of contributing to that Petition and you remember the things you said about it.

Hon. Speaker: We ran out of time.

Hon. Mirenga: It is okay. Definitely, I will have time when it finally comes back.

Hon. Speaker: Very well. Let us now have Hon. Wesley Korir

Hon. Korir: Thank you, Hon. Speaker. A couple of weeks ago, I raised a concern on the Floor of this House on anti-doping in this country. I told you that I had brought a legislative proposal to make a Bill. You told me to appear before the Committee. I have appeared three times before the Departmental Committee on Labour and Social Welfare and there has never been quorum. We have not been able to move on and yet we have only less than three weeks before the deadline we have been given by the World Anti-Doping Agency (WADA) to pass a legislation to enable this country to participate in this year's Olympics expires.

Hon. Speaker, I would like to urge you to evoke Standing Order No.1. Allow the Bill to be published so that we can save this country from shame and give young men and women who have the ambition of running in the Olympics a chance to participate this year. Let us give this country what enables us to raise our flag everywhere in the world.

Thank you, Hon. Speaker.

Hon. Speaker: Are there any members of the Departmental Committee on Labour and Social Welfare? I certainly do not seem to see the Chairperson, Hon. David Were of Matungu, or the Vice-Chair, Hon. Tiyah Galgallo. This is a very serious indictment.

Hon. Korir, has been raising this issue of anti-doping legislation. He has reported that he has appeared before the Committee three times and it is not able to raise quorum. Both the Chair

and Vice-Chair as evidence of what Hon. Korir is saying are absent even now. Is that to say that the Committee has ceased to operate, in which case then we can order its reconstitution? Are there any Members of that Committee present who cannot quorate for purposes of taking views from Hon. Korir about the legislative proposal? It is important for the country. Who is this? Where he is, he looks a bit dark and I cannot see him clearly? Is that Hon. Serem? Are you a Member of that Committee?

Hon. Serem: Yes, Hon. Speaker.

Hon. Speaker: Can you explain why I cannot order that you sit this Thursday and listen to the proposals by Hon. Korir?

Hon. Serem: Thank you, Hon. Speaker. Though, I cannot speak for the Chairman or the Vice-Chairman, I support the anti-doping legislation that is coming up. I wish that we had the numbers required. I have always supported this proposal knowing that most of the athletes who participate in sports in this country come from my backyard.

I was also once one of the best athletes in my constituency when I was growing up. When I hear the issue of anti-doping becoming a problem in this country, I support that we should put measures in place to make sure that our boys and girls who are putting careers in sports are taken care of.

Hon. Speaker: Then, Hon. Serem you should be the first one to fish out the Chairperson and the Vice-Chair wherever they may be hiding.

Hon. Serem: Hon. Speaker, I will work hard to make sure that they are in the House.

Hon. Speaker: Very well. Hon. Katoo Metito, Hon. Washiali and Hon. Chrisantus Wakhungu Wamalwa, the ball is in your court. You must ensure that Committee sits on Thursday, this week at 11.00 a.m. to listen to the views that Hon. Wesley Korir and other stakeholders like himself may have, including Hon. Serem, so that that legislative proposal can be fast-tracked.

The youth of this country and especially the athletes run the risk of being banned from participating in national competitions. Hon. Katoo, Hon. Wakhungu, Hon. Washiali and the leadership should kindly ensure that that Committee sits on Thursday this week at 11 a.m. to consider those proposals and present a report to the House. If the Committee does not sit then I will issue other orders regarding its composition.

BILL

Second Reading

THE COMMUNITY LAND BILL

(Hon. A. B. Duale on 1.3.2016)

(Resumption of Debate interrupted on 3.3.2016 - Afternoon Sitting)

Hon. Speaker: Hon. Members, debate on this Bill was concluded, including the reply by the Mover. The only thing that remained was for me to put the Question.

(Question put and agreed to)

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

Hon. Members, before we move to the next Order, which is on the Committee of the whole House, I wish to make an announcement. At the request of the Chairperson of the Departmental Committee on Energy, Communication and Information, Hon. Jamleck Kamau, with regard to the Petroleum (Exploration, Development and Production) Bill and at the request of a very active Member, namely, Hon. Silverse Anami, with regard to the Protection of the Traditional Knowledge and Traditional Cultural Expressions Bill, the business shown as Order No.9 (ii) and (iii) will be removed from the Order Paper and will appear in the Order Paper on Tuesday, next week so that they are able to put in appropriate proposals for amendments. We will only deal with the Natural Resources (Classes of Transactions Subject to Ratification) Bill.

Considering that the Bill is not very long, I appeal to Members to come back from the Committee of the whole House ready to transact the very long and interesting Bill shown under Order No.10, namely, the Energy Bill (National Assembly Bill No.50 of 2015), in which debate will commence this afternoon.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Deputy Chairman (Hon. Kajwang') took the Chair]

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, this is the Committee of the whole House constituted to consider the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly No.54 of 2015).

(Clause 3 agreed to)

Clause 4

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 4 of the Bill be amended in sub-clause (2) by inserting the words "Notwithstanding subsection (1)" immediately before the words "The following classes".

The import of that amendment is for transactions that are exempted to be allowed under sub-clause (2).

(Question of the amendment proposed)

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

(Clause 4 as amended agreed to)

(Clauses 5, 6, 7, 8, 9 and 10 agreed to)

Clause 11

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 11 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause—

“(1) The Cabinet Secretary shall establish and maintain a central register of agreements relating to natural resources and other transactions which have been ratified as provided under this Act.”

The current Clause 11(1) asks for all ministries that have different transactions to have a depository of their own. Our amendment proposes that the Cabinet Secretary for Environment and Natural Resources be the central registry of all these transactions.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Endebess, your button is constantly on intervention mode. Do you have something to say? Where are you, the Member for Endebess?

*(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)*

(Clause 11 as amended agreed to)

Clause 12

(Technical hitch)

The Temporary Deputy Chairman (Hon. Kajwang'): You will get the microphone in a short while. Please continue.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 12 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) Where the request for confidentiality is granted, the Cabinet Secretary responsible for the natural resource that is subject of the transaction shall submit the agreement to Parliament which shall conduct the process of ratification in camera without disclosing any confidential material, but a summary of the agreement shall be made available to the public.”

Hon. Temporary Deputy Chairman, Clause 12, as it is currently in the Bill, gives the Cabinet Secretary a blank cheque to decide what can be publicly disclosed or for purposes of commercial confidentiality, national security or other public interest and asking Parliament to approve such an agreement without it knowing what is contained therein. We are suggesting that such a grant of confidentiality should be submitted to Parliament under a process in camera to let Members know what exactly is in it to be undertaken so that we are not ratifying things in blindness.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Kitui Central, what is the nature of your intervention?

Hon. Mulu: Hon. Temporary Deputy Chairman, I wanted to support this amendment but I am not sure whether the Question has already been carried.

The Temporary Deputy Chairman (Hon. Kajwang'): Please proceed.

Hon. Mulu: In my view, this amendment is very important because while the Cabinet Secretary will be privy to the information, I think it is important that Parliament is briefed in terms of the nature of this confidential information so that at the end of the day, it does not become a rubber stamp.

*(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)*

(Clause 12 as amended agreed to)

Clause 13

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 13 of the Bill be amended—

(a) in sub-clause (2) by —

(i) deleting paragraph (a) and substituting therefor the following new paragraph—

- (a) prescribe the particular classes of transactions, entered into between the effective date and the commencement date which should be audited, the modalities for conducting such audits and the use for which such findings may be put;
- (ii) inserting the words “under section 5” immediately after the words “the agreement” appearing in paragraph (c); and
- (b) by inserting the following new sub-clause immediately after sub-clause (2) —
 - (3) The regulations to be prescribed under subsection 2(a) shall be made within two years of the commencement of this Act.

Hon. Temporary Deputy Chairman, there are three sets of amendments under Clause 13. This is an important amendment because this Bill was supposed to be in place by 15th August, 2015. This amendment protects the natural resources transactions that took place between 15th August, 2015 and the date this Bill will commence. The Constitution only covered the transactions between 15th August, 2010 and 15th August, 2015. This small lacuna in the middle needs to be taken care of so that we do not get into court cases.

The second amendment is a cleaning exercise under (ii) to insert the words “under section 5”.

The third amendment is to provide for the timeline under which the regulations under this section need to be done and that is “within two years of the commencement of this Act”.

(Question of the amendment proposed)

*(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)*

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

(Clause 13 as amended agreed to)

(Clauses 14 and 15 agreed to)

Schedule

The Temporary Deputy Chairman (Hon. Kajwang'): The Leader of the Majority Party, are you in the Chamber?

Hon. Katoo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the Schedule by deleting Item 1 on Crude Oil and Natural Gas.

Hon. Temporary Deputy Chairman, with the Communication that the Speaker has just made, the next Bill, without anticipating debate, will be The Petroleum (Exploration,

Development and Production) Bill. In this Bill, the clause on crude oil and natural gas is well covered. Therefore, it is our view that we delete it from this Bill.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, we are on the Schedule. We are transacting the first item.

(Question of the amendment proposed)

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

(Schedule as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Emuhaya, are you in the Chamber?

Hon. (Ms.) Abdalla: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang'): There is a point of order by Hon. (Ms.) Amina Abdalla.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I do not know whether the matter has been overtaken by events but I would like to be on record as having opposed the amendment proposed by the Leader of the Majority Party through the Whip. That amendment throws the Constitution into confusion and the justification he has given is very inconsequential because it means the entire Bill does not hold water. As I was moving this Bill, I mentioned that transactions of natural resources have been covered by other legislations, and that this Bill should not exist because it is already covered. I talked to you at length about the difference between "approval" and "ratification". The problem---

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. (Ms.) Abdalla, I have entertained you because we need to move together since you are the Chairlady of the Committee and I need to listen when you speak. I was waiting for debate on that amendment but none came.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, my lights were on.

The Temporary Deputy Chairman (Hon. Kajwang'): If you needed to intervene on this, I would have seen the intervention buttons. The Member for Chuka/Igambang'ombe has just pressed his intervention button. The Member for Turkana Central has also pressed his intervention button after voting "no" very loudly. The Member for Narok North and all of you have just pressed the intervention buttons. How else do I know that there is a Member who has a contrary opinion if I do not see it on my screen?

Hon. (Ms.) Abdalla: My intervention button was on, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang'): I keep you on constantly because you are the Chairlady of the Committee.

Hon. (Ms.) Abdalla: I do not mind whether the vote went the way it went but I want to be on record---

The Temporary Deputy Chairman (Hon. Kajwang'): We are not here to make any draconian legislation.

Hon. (Ms.) Abdalla: It is a draconian legislation with that amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. (Ms.) Abdalla, if you think there is something we need to discuss--- Hon. Members, she is right in her place to rise and make

the observations as she has because she is the Chair. That is why presidential systems work through Committees because we take it that they have expertise and time to summon witnesses to give us value to our legislation. If that is your view, the best thing is to seek a recommittal. You are a ranking Member so you know what to do to commit.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, the reason I was asking to say what I have to say is because the move has been made by the Mover of the Bill. Since they are Government they should know better than what they are doing. Mine was only to record the fact that we are going against the Constitution. The spirit of the Constitution wanted a control system especially for the extractive sector; that is mining, oil and gas. I would not bother to do a recommittal because that is the responsibility of the Government. If the Chief Whip of the Majority Party wishes to move an amendment that is draconian, let them live with it.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you. I appreciate you.

(Hon. Katoo spoke off record)

Give me time the Chief Whip of the Majority Party. I am able to control this very well. You know in the presidential system, as far as I am aware, there is no Government or Opposition. I know all of us in the Chamber have the role of oversight over this Government. So, it is your role. I take the Committee of the whole House seriously because that is where we transact business. I repeat, therefore, that if there is a sentiment, that there is a legislation that will be unconstitutional, you need to know what to do according to the Standing Orders and recommit. You still have that option except that the HANSARD has taken the vote. I am unable to go back to it but you know what to do when it comes to that.

(Loud consultations)

Why is there debate on this? The Member for Ugunja, what is this? I am trying to wrestle with my system here.

Hon. Wandayi: Hon. Temporary Deputy Chairman, I really appreciate your guidance but let us try to look at this matter in the right context. I happen to sit in the Committee chaired by Hon. Amina Abdalla. I really sympathise with my Chair, Hon. Abdalla. You can say for sure that there is no Opposition or Government in the House but the reality of the matter is that the Government is represented by the leadership of that coalition. If you start seeing discordance in the manner amendments are proposed on Bills which have gone through the Committee ably chaired by a Member of the Jubilee Coalition, then there is a problem.

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Ugunja, I hear you but I do not want us to digress.

Hon. Wandayi: I wish you would indulge me more. It is very frustrating for the Committee to go through the motions then the Chief Whip of the Majority Party comes up with draconian amendments that go against the letter and spirit of the Constitution. That is basically rubbishing the work the Committee has done and rubbishing the work Kenyans did in enacting the Constitution. It is actually encouraging impunity. Therefore, as we proceed---

The Temporary Deputy Chairman (Hon. Kajwang'): All right, I have heard you, the Member for Ugunja. Resume your seat. I do not want this to digress into a discussion which is not before us. I have told you and I do not have to persuade you beyond what I have said. The

Chair does not persuade. You know the Standing Orders and how recommitals are done. That is the position.

(Hon. Kamau spoke off record)

Why should I when I have told you almost to a point of persuading you--- All right, the Member for Kigumo, I will give you a chance because you are a ranking Member. Otherwise, I was going to ask you to resume your seat. Will you proceed to the Dispatch Box so that you are heard? I am having a small problem with my communication gadgets here. Can you add volume for the Dispatch Box?

Hon. Kamau: Thank you, Hon. Temporary Deputy Chairman. I just want to explain to Members so that we can move in the same direction. If you look at the classes of transactions subject to ratification as per this Bill before the House, you will find that it is clear that they include crude oil and natural gas, which is not bad. The problem comes in because there is Bill that is dealing with the issue of exploration, production and development of crude oil. The biggest issue here, if Members can listen to me, including the Chair of this Committee, so that we can move in the same direction, the challenge in the oil sector is very complex. The biggest problem is; at what point does Parliament come in to give ratification? The issue which we have right now, if you look at this Bill, is that authorisation to extract crude oil or natural gas follows the approval of the development plan.

Let me explain for just one minute what a development plan is. It means that you have someone who has been given a contract by the Government. It is called “Production Sharing Contract (PSC)”. Once you are given that by the Government that is where the ratios of what goes to the Government and what goes to Kenyans come in. Once that is done, you are now being told that at the point of the development plan you will have ratification. It means that it is possible for somebody to get some very weird sharing ratios and still go on to do production. What will be required to be ratified is the development plan. Our Bill is very clear on the processes that are supposed to be taken.

That is well explained under Section 58 of the Exploration Bill. I wish things---

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Can we move on? Hon. Amina Abdalla, your hands are up.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, this is probably why Parliament needs nominated Members who do not have other responsibilities and read a lot and have issues to raise. I want to agree with Hon. Jamleck Kamau about royalties and the stage---

The Temporary Deputy Chairman (Hon. Kajwang’): Is a nominated Member the same as an Independent Member?

Hon. (Ms.) Abdalla: No. This is where the problem lies. It lies in the wording of “following approval of the development plan”. Let me explain the spirit behind the Constitution under Article 71. It requires that deals made between proponents of projects and the Government that are large and with many consequences--- Sometimes those deals commit the country into tax waivers and the details or the nitty-gritty are brought to the House so that we avoid opaqueness and promote transparency. The problems with contracts in the oil, gas and mining sectors are the reason behind this Article in the Constitution, that you avoid opaqueness. We are not talking about when it is at the exploratory stage or before the nitty-gritty and even the royalties because the Mining Bill also has the same provisions that he is speaking about. We are talking about

company “X” developing an oil field at a point where they are asking to get duty waivers on machines or on income waivers; issues that will jeopardise the country if it is left at a negotiation level. I have problems with bringing a detailed transaction between a proponent and the Government to the House especially when they are at a very small-scale. This is why in the mining sector we said that we want the very large ones to be brought to the House so that we embroil the spirit of the Constitution.

So, what he is talking about has a relation to the words “after the crude oil”. My problem is removing “crude oil and gas” completely without specifying at what stage this is going against the spirit of the Constitution. It was exactly to deal with mining, oil, gas and forest concessions.

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Kigumo is saying that the debate which is going to follow that issue seems to be captured on force. However, what we should do is that if any Member is dissatisfied with the vote that we have taken there is the procedure for recommitment which you are free to follow at the appropriate time. Because I have expressed myself on the vote, I am unable to go back to it.

Let us proceed with the Member for Emuhaya. Are you in the Chamber? Then that amendment is dropped.

(Proposed amendment by Hon. (Dr.) Ottichilo dropped)

Who is next? Yes, Chair. Which one are you considering?

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Schedule to the Bill be amended by inserting the following new item in the proper alphabetical sequence—

Forests Excision or change of boundaries of gazetted public forests or nature reserves.

This is so that we include the concession of forests under the Schedule. That was left out and yet the proposed Forests Bill and the Wildlife Conservation Act require that changes of boundaries of gazetted public forests or natural reserves be done after parliamentary approval. Just to emphasize the point, everything under this Schedule has been covered by a different Act of Parliament. So, the fact that the next Order is dealing with petroleum does not hold water because both mining and wildlife conservation cover parliamentary ratification and processes of how that should go on. They are all there.

(Question of the amendment proposed)

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

(Schedule as amended agreed to)

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Kajwang'): Who is the Mover of this Bill? Is it the Committee Chair and the Whip of the Majority Party?

Hon. Katoo: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015) and its approval thereof with amendments.

(Question proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Do you know that you can fail re-committal because you are looking at me and not take a vote? I can declare that I have not heard you in the vote.

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL

Hon. Kajwang': Hon. Speaker, I beg to report that a Committee of the whole House has considered the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015) and approved the same with amendments.

Hon. Katoo: Hon. Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request Hon. Jamleck Kamau to second.

Hon. Kamau: Hon. Speaker, I second.

(Question proposed)

Hon. (Prof.) Nyikal: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Nyikal

Hon. (Prof.) Nyikal: Hon. Speaker, there was a discussion regarding an amendment that struck off crude oil and natural gas. I would like that to be re-committed so that Members can get a chance to discuss it properly. It was indicated that there is another Bill that is coming to take care of that. However, considering Article 71 of the Constitution, this is very important. This article provides the classes that need to be ratified by Parliament. Crude oil and natural gas are very important. I am asking for the re-committal of that.

Hon. Speaker: Hon. Katoo.

Hon. Katoo: Hon. Speaker, the explanation was given. Why that amendment was done is because it is well taken care of in the next Bill, the one that ruled that it will be discussed on a later date. Even the issue of Article 71 is well taken care of in that Bill. The point of order being raised by my good friend, Member for Seme, is a little bit late because the Chair of the Committee of the whole House gave a chance to any member who would like to ask for a re-committal and nobody was willing to recommit. So, even at the Committee of the whole House, there were no indications that any member would ask for a re-committal. I find it a little bit late at this point.

Hon. Speaker: Was the matter about the re-committal discussed in the Committee? Hon. Nyikal wants to pursue the matter.

Hon. (Prof.) Nyikal: Hon. Speaker, the matter was actually raised and the Chair indicated that there will be appropriate time for re-committal. My understanding is that this is the appropriate time for re-committal. So, it was actually discussed. Procedures are important and must be adhered to. This is an important matter, and guidance on re-committal was given. In my understanding, this is the time for recommitment. If we are going to give ratification of what natural resources Parliament needs to take part in, then crude oil and other natural resources are the most important. I do not see any contradiction that will arise from the alignment of this law with the other law that will be in place.

Hon. Speaker, I urge hon. Members who want to discuss this matter further, I being one of them; to support that we recommit the schedule. In my view, item one should be reinstated.

Hon. Speaker: There is something radically wrong with the system. Hon. Jamleck Kamau.

Hon. Kamau: Hon. Speaker, with all due respect to my good colleague, when the matter came up before the Committee of the whole House, I was very clear that he was one of the Members who were listening very attentively. I could even see him nod his head. I thought that the particular matter ended there. That notwithstanding, the issue has already been overtaken by events. This matter is comprehensively covered in the Petroleum (Exploration, Development and Production) Bill. Clause 58 clearly talks about Article 71 of the Constitution with respect to crude oil and natural gas. Therefore, we would probably want to ask the Member to look at the Petroleum (Exploration, Development and Production) Bill. If there are issues that he thinks need to be covered there, then they will be covered. At the end of the day, there is no point of having two legislations for the same thing. It is important for us, as a House, to be seen to be moving in one direction. I would like to persuade my colleague, Hon. Nyikal, to feel satisfied with the Bill that is before the House. That is because the Petroleum (Exploration, Development and Production) Bill is before the House as well. The matter is covered under Clause 58 of that Bill. If there are issues that he feels need to be canvassed further, they can be brought before the Committee at that particular time.

Hon. Speaker: Hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Hon. Speaker, I support Hon. Nyikal's proposal for recommitment. As a House, we need to make very bold decisions. Everything in this schedule is covered under a Bill that has either been passed or is pending before Parliament. The Mining Bill is pending under mediation. The Kenya Forest Bill is pending. The Wildlife Bill has been passed and the issues of genetic material are under the Biosafety Act. If we use the argument presented by Hon. Jamleck Kamau, then the entire schedule and the Bill do not need to exist. We need to make a bold decision and say that we do not need this Bill because every Bill on natural resources covers

the component of Article 71 of the Constitution, which is about ratification. So, the decision is very simple. We can shelve the entire Bill because every single item in this schedule is covered in a Bill that has either been passed by Parliament or is pending.

If we remove crude oil, then we need to get rid of the entire Bill because everything else under this schedule is covered by an Act of Parliament. So, the argument does not hold. I was only listening to the approval plan issue – that it could be premature to do it at the development plan stage. Removing crude oil from the schedule would be promoting opaqueness and fighting transparency in the extractive industry.

For that reason, I do not support.

Hon. Speaker: Member for Turkana Central.

Hon. Nakara: Thank you, Hon. Speaker. This House must protect the minority. This House must protect the people whom God has blessed with natural resources. Deleting crude oil from the schedule would be making the minority vulnerable. The Whip has said that they are taking it to another level. When we reach that particular level, the majority, who are not blessed with natural resources like Turkana, will vote “yes”. The sufferers will be the ones who have those resources in their counties. Please, re-commit this issue to a Committee of the whole House so that we can discuss it. Those who are supporting this position do not have crude oil and other natural resources in their areas. Those of us who are minority need to be protected by the Constitution and this Bill.

Thank you.

Hon. Speaker: Hon. Mbarire, do you want to contribute?

Hon. (Ms.) Mbarire: Hon. Speaker, I want to speak as a member of the Departmental Committee of Energy, Communication and Information and inform Hon. Amina Abdalla that Clause 58 of this Bill has truly taken care of crude oil and natural gas. We have even provided for parliamentary ratification of any contractor who might want to invest in that area. So, there will be no opaqueness. It is important for us to realise that natural gas and crude oil fall squarely under the Departmental Committee on Energy, Communication and Information.

Hon. Speaker: Hon. Moitalel ole Kenta.

Hon. ole Kenta: Hon. Speaker, I would like to join my Chair because we are dealing with a Bill on classes of transactions subject to ratification by Parliament. The Constitution is very clear in Article 71(1). It says, under Sub-Article (1), that a transaction is subject to ratification if it involves the grant of a right or concession by or on behalf of any person, including the national Government, to another person for exploitation of any natural resource of Kenya.

You cannot remove oil and gas from the natural resources of Kenya. They are attempting to remove what the Constitution has provided for. If we remove this, it will be prone to abuse. That is the intention of the amendment. It is mischievous.

Thank you, Hon. Speaker.

Hon. Speaker: Therefore, do I take it that the Member for Seme is moving an amendment? This is the kind of amendment that you can move without notice. Go on record properly, Hon. Nyikal.

Hon. (Prof.) Nyikal: Hon. Speaker, I beg to move:-

THAT, the Motion for the agreement with the Report of the Committee of the whole House be amended by inserting the words “subject to re-committal of Item 1 of the Schedule.

Hon. Speaker: I do not see further contributions and so I will put the Question.

(Question, that the Schedule be re-committed, put and agreed to)

Hon. Speaker: Hon. Members, having voted in that manner, we will go back to the Committee of the whole House.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Kajwang') took the Chair]*

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL

The Temporary Deputy Chairman (Hon. Kajwang'): This is the Committee of the whole House constituted to reconsider the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015). This will only consider a specific item which is the first item of the schedule. So, I shall call the Schedule for re-committal.

Schedule

The Temporary Deputy Chairman (Hon. Kajwang'): Let us have the Whip of the Majority Party. I beg your pardon! I have just been corrected by my advisors at the Table that the owner of this re-committal is now the Member with the re-committal. So, shall I hear from the Member for Seme?

Hon. (Prof) Nyikal: Hon. Temporary Deputy Chairman, I am most grateful that we have the opportunity to discuss this re-committal of Item 1 of the Schedule.

The Temporary Deputy Chairman (Hon. Kajwang'): Please, move nearer to the microphone so that we can hear you fully.

Hon. (Prof) Nyikal: The whole of this Bill is to give what areas of our natural resources will need ratification by Parliament. In my view, the most important natural resources that we have are crude oil and natural gas. In this country, for the first time today, there is evidence that we have oil and natural gas. From experience in other countries, we know that when there is discovery of oil and gas, unless this is managed properly, countries get into problems. The resources that arise from there do not get to the people.

It is, therefore, of utmost importance that that process should be brought before the National Assembly. It has been indicated that Section 58 of a coming Bill--- I do not know about the law of anticipating debate. They are saying that it will be covered there. If you look at Part I (2), it is quoting Article 71 of the Constitution. It states that it is upon the declaration of commerciality by

the contractor and the submission of the adoption and approval of Parliament pursuant to Article 71 of the Constitution.

That is putting it between the Cabinet Secretary (CS) and the contractor. In my view, this is something that should be in law. It should be clear to anybody who is going to undertake exploration that this will be subject to ratification by Parliament.

It cannot be left to a group of people, whether they are explorers or top Government officials, to make a decision. At what point in the process will they bring this to Parliament? This must be known as coming to Parliament right from the outset.

So, I move that we have Item 1 reinstated in the Schedule.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): I will entertain a few interventions, starting with those that I have not heard. Let us have the Hon. Member for Nambale.

Hon. Bunyasi: Thank you. The proposed amendment by Hon. (Prof.) Nyikal is one of the most fundamental things that have come before this House. The exploitation of natural resources, particularly in those two sub-sectors, is subject to tremendous abuse and opaqueness. It has brought down governments and led to excessive corruption. There are critical issues to be dealt with. In the best of circumstances, we should account for what is happening. Having that kind of thing not ratified by Parliament, which is the only institution that has a window for the people and allows public participation, is very dangerous. The amendment will allow us to force the element of transparency on the Executive. So, to keep this between the contractor and the CS is the least that anybody could have thought of. To bring back this proposed amendment before Parliament will be extremely important.

It is not just an economic matter. This is the only place where we can safeguard inter-generational issues. We can look at these issues detached from the pressures of the Executive. We can look at the implications across generations and regions. This is the only place which is correctly designed to do that.

I strongly support the proposed amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. I want to give some directions as we go on. Order, Members! I need to take some direction on this. When you look at your Standing Order No. 85 (1) and (3) it states:-

“(1) It shall be out of order to anticipate the debate of a Bill which has been published as such in the *Gazette* by discussion upon a substantive Motion or an amendment, or by raising the subject matter of the Bill upon a Motion for the adjournment of the House.

(3) In determining whether a debate is out of order on the grounds of anticipation, regard shall be to the probability of the matter anticipated being brought before the House within a reasonable time.”

You people have adverted to a Bill which is on the Order Paper. In other words, the probability that, that Bill is before the House is almost 90 per cent. So, I am reading Standing Order No. 85, which is the situation that this Standing Order has in mind. So, the idea of discussing a Bill which is before us in the next Order will be out of order, if you keep on going in that direction. Hon. Member for Seme, do not be very happy because you are the one who has opened it, discussed

it and even quoted that Section. So, can you stay away from the discussion of all those sections and legislations which are pending before us because according to your own Standing Orders, they become anticipated debate? Let us have a discussion without reference to those things.

Let us have the Member for Chuka/Igambang'ombe.

Hon. Njuki: Thank you, Hon. Temporary Deputy Chairman. I am persuaded to change my earlier position. I agree with Hon. Amina Abdalla. When you are in Parliament having been nominated, you have a lot of time to read than those of us who run around. I am sure she is well read. What she has proposed does not in any way affect any other Bill that has been brought into this House. There is nothing wrong with over-legislating if it helps the situation. It may even capture something that may not be captured in the next Bill. Therefore, it is of no harm. If it was of any harm, then we would withdraw it. But for now, it would just be adding value to this Bill.

I support.

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Wundanyi, as the Whip of the Minority Party.

Hon. Mwadeghu: Asante sana, Naibu Mwenyekiti wa Muda, kwa kunipa nafasi hii. Kwanza, ninashangaa ni kwa nini wenzangu wanafikiria kuwa sehemu hii iondolewe ili tuhakikishe kuwa mafuta na gesi zikipatikana basi watu wawili, mwanakandarasi na waziri wakishakubaliana yameisha, halafu ndio baadaye iletwe Bungeni. Kama kuna njia moja mbaya ya kuleta---

Hon. Kamau: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Wundanyi, just one minute. The Member for Kigumo is on a point of order. I will come back to you.

Hon. Kamau: Hon. Temporary Deputy Chairman, it is actually misleading for the Member to claim that I said the decision would be made by two people. If, indeed, he was listening to the debate that was here before, it was clear it was about at what point the ratification comes to Parliament. So, it is totally misleading for the Member to say I was propagating that it is only two people, the Cabinet Secretary and the contractor, who should actually do that. He should withdraw that.

The Temporary Deputy Chairman (Hon. Kajwang'): I will peruse the HANSARD. Do not worry. You can proceed. When I will have perused the HANSARD, I will come to a better understanding of what was actually said and what was not said.

Proceed, please.

Hon. Mwadeghu: Mheshimiwa Naibu Mwenyekiti wa Muda, vile nilivyoelewa ni kuwa--

The Temporary Deputy Chairman (Hon. Kajwang'): No! Do not get into a discussion on this. Proceed as you had intended to.

Hon. Mwadeghu: Wacha nifuate mwelekeo wako, Mhe. Naibu Mwenyekiti wa Muda. Yangu ni kusema kwamba nchi nyingi zimegombana na zimefanya watu wakawa maskini, haswa wakati mafuta ama gesi imepatikana kwa sababu mikataba inawekwa bila Bunge kuhusishwa. Wakati umefika tukubaliane kama Bunge kuwa mikataba yoyote ambayo itawekwa lazima iletwe Bungeni, hasa hii ya mafuta, kabla lolote kufanywa ili tujue ni nini iko ndani yake. Tunaweza kuwa tunajitia kitanzi. Mara nyingi tumejitia kitanzi. Mikataba imewekwa na baadaye ikiletwa hapa Bungeni, tunajikuta tumejifunga. Hatuna la kufanya na hatuwezi kujitoa kwenye mikataba hiyo. Wakati umefika ikiwa tunatunga sheria, tuhakikishe kuwa tumeangalia wale watu wako na hizo rasilimali wasinyanyaswe.

Ombi ambalo limeletwa na Mhe. Amina Abdalla na Mhe. Profesa Nyikal ni nzuri. Nawashukuru kwa njia ya kipekee kwa kuona pahali tatizo liko. Naomba Wabunge wenzangu tukubaliane kwa kauli moja. Hata tusibishane. Wakati umefika tuunde hii sheria kuwa mikataba italetwa hapa, hasa ya mafuta, kabla watu kupanga mikakati yao ya kunyanyasa Wakenya.

Mhe. Naibu Mwenyekiti wa Muda, naunga mikono. Asante.

The Temporary Deputy Chairman (Hon. Kajwang’): You know we are in the Committee of the whole House where we do not debate. You should not appear as though you are opening debate as if these are fresh issues. However, because we want to come to some very good consensus, I will give an opportunity to, maybe, two or three Members.

The Member for Tongaren, I have not heard you and I can see your request here.

The Member for Turkana Central, you spoke very well in the House.

Hon. (Dr.) Simiyu: Thank you---

The Temporary Deputy Chairman (Hon. Kajwang’): Just a minute, Member for Tongaren. Member for Turkana Central, you spoke very well when we were in the House. Member for Narok North, you spoke very well when you were in the House and so, the House knows the position you have taken. Hon. Amina Abdalla spoke very well and the House knows the position she took; same to the Member for Kigumo. So, let us have Members who have not spoken.

Member for Tongaren, please proceed.

Hon. (Dr.) Simiyu: Thank you, Hon. Temporary Deputy Chairman. I had briefly gone out of the Chamber when I heard the good lady, Hon. Amina Abdalla; express her reservations about the goings-on. With the trust I have in her, being a ranking Member in this House and knowing that she does good research before she talks, I thought everything would be easy after that. But in subsequent proceedings, I heard Hon. Lodepe appeal that the minority need protection from this House. I ran back because I realised that, perhaps, we might be on the brink of committing an illegality. That is what I have come to realise.

If we delete Item 1 from the Schedule, that will be unconstitutional. I stand to support that the item be brought back into the Bill, so that we do not enact an unconstitutional legislation and for us to protect the minorities. Every law should be made with a vision of protecting the minorities. That should be the key thing because we know that most of the oil and gas is being discovered in those lands where minorities live. So, the onus is on this House to ensure that they are protected and this is one way of doing it.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, this is the beauty of the National Assembly. We are here to make legislation that serves the nation. When you come together and agree on a matter like this; that is the beauty of this House. There is nothing really wrong with what you are doing this afternoon.

The Member for Kigumo, do I hear that you have some reconsidered version of the amendment?

Hon. Kamau: Hon. Temporary Deputy Chairman, thank you very much. Indeed, I have just spoken to the Chair of the Committee and we have come to an agreement so that we settle the matter properly. Members, just give me one minute so that I explain it exactly the way it is. I am happy my colleague has got it right.

As it is right now, the schedule says that Parliament will give authorisation to extract crude oil or natural gas following the approval of the development plan. The question is: What is

the development plan? At what stage does it come in? If you understand the processes of extraction, the first thing that happens is that the Ministry and a contractor sign something called a production sharing contract. That is the contract that details the sharing ratios between the contractor and the Government. To me, that is the most important point. After that, the contractor goes out to start exploration. If they get oil, they come up with a development plan.

The way Item 1 is means that Parliament will only get involved in the transactions at the level of the development plan, long after the agreement on the ratios have been concluded. My argument was that we should bring in Parliament into the process before the contractor gets into the site to start exploration so that, from the word go, the ratios are clear.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. But what is the text of the consensus you have built? Can I hear it from Hon. Amina whom I think must have considered it?

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I wish to propose an amendment to the transactions requiring parliamentary approval, under crude oil and natural gas, by deleting the words appearing after “natural gas” and substituting therefor the words “at the earliest possible opportunity.”

The Temporary Deputy Chairman (Hon. Kajwang’): Please, repeat yourself so that we can hear you.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, the agreement we have reached with Hon. Jamleck is that we delete the words “following approval of the development plan” and substitute therefor the words “at the production sharing contract.”

The Temporary Deputy Chairman (Hon. Kajwang’): Which words do you want to replace it with?

Hon. (Ms.) Abdalla: We propose to delete the words “following approval of the development plan” and replace with the words “at production sharing contract.”

The Temporary Deputy Chairman (Hon. Kajwang’): So, how will it read?

Hon. (Ms.) Abdalla: It will read “authorisation to extract crude oil or natural gas at the production sharing contract stage”.

The Temporary Deputy Chairman (Hon. Kajwang’): “The authorization to extract crude oil or natural gas at the stage of production sharing contract”. Is that so?

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I want to probably give this opportunity to Hon. Jamleck to explain that because I am having a second thought because if it is at the exploratory stage, then there is a problem. Let us put something ambiguous in the sense that it is at the earliest opportunity. That is because if you are exploring, you might find that they are not commercially viable volumes. I am fearful that if you give that at the petroleum sharing agreement, it will just be an amorphous document. I do not know whether that should be the contract. The details of what we are looking for, for Parliament to approve, are not only things like revenues, but also looking at tax concessions and things that a company will not be provided for.

The Temporary Deputy Chairman (Hon. Kajwang’): What if I suggested, without requiring you to consent, Member for Narok South should have helped in this. Why not put a full stop after gas, “authorization to extract crude oil or natural gas”, then you remove these other words that seem to circumscribe to a point of this production. Will that do well with you?

I am proud to have assisted in some way, but can you speak because it is not my amendment.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Schedule be amended by deleting the words, “following the approval of the development plan” after the word “natural gas” and putting a full stop after the words “natural gas”

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you, but I still have a few procedural issues to deal with. Member for Turkana Central, we are now heading somewhere. Before we go to what Hon. Amina Abdalla is proposing, I still have a few procedural problems. One, I still have the amendment by the Chief Whip of the Majority Party. Hon. Katoo, with this development, do you want to withdraw your amendment?

Hon. Katoo: Hon. Temporary Deputy Chairman, I have no objection to that.

The Temporary Deputy Chairman (Hon. Kajwang’): So, shall you, therefore, take over this amendment proposed by Hon. Amina Abdalla and express yourself as dropping the amendment in the text in the Order Paper, but offering a new amendment which will take the version that Hon. Amina has proposed.

Hon. Katoo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the Schedule by deleting Item 1 on crude oil and natural gas and have---

The Temporary Deputy Chairman (Hon. Kajwang’): I think you are on the right path. But you can say: “By deleting those words in the second box.”

Hon. Katoo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended in the Schedule to read, “authorization to extract crude oil or natural gas,” and delete the words “following approval of the development plan”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): All of you that I see on my list have discussed. Shall I therefore put the Question?

Hon. Members: Yes.

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

(Schedule as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Leader of the Majority Party.

Hon. Katoo: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of Item 1 of the Schedule of the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill, No.54 of 2015) and its approval thereof, with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Natural Resources (Classes of Transactions Subject to Ratification) Bill, National Assembly Bill No. 54 of 2015 and approved the same with amendments.

Hon. Katoo: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request Hon. Jamleck Kamau to second.

Hon. Kamau: Hon. Temporary Deputy Speaker, I second. I really want to thank the Hon. Members and the Hon. Chair. That was a good middle ground and it clearly talks about the classes of transactions subject to ratification. I am now in concurrence that we are on the right track.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): So, you are seconding?

Hon. Kamau: Yes, I second.

(Question proposed)

(Question put and agreed to)

Hon. Katoo: Hon. Temporary Deputy Speaker, I beg to move that the Natural Resources (Classes of Transactions subject to Ratification) Bill, National Assembly Bill No. 54 of 2015, be now read the Third Time. I request Hon. Jamleck Kamau to second.

Hon. Kamau seconded

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Anybody who wants to contribute? The Chair, Hon. Amina.

Hon. (Ms.) Abdalla: Thank you, Hon. Temporary Deputy Speaker. I want to support the passing of this Bill and note that, as a country, we seem to be shying away from saying that we do not need omnibus Bills. This Bill is covering matters that are already covered in all those other Natural Resources Acts. Sometimes, I think that the Attorney-General’s Office should advise the Executive that we do not really need some of these omnibus Bills that are covering a wide range of things that are already covered in the mother Acts.

The question of benefit sharing and the issue of transactions that require parliamentary approval are covered in all our Acts. Some of our decision-makers are not bold enough to say they are sorry despite the five year term limit that they have to put this Bill in place. It is covered in all the Natural Resources Acts that have the same timeline. You should also go through it. Having gone through it, I am happy that we have an agreed Bill that covers all the natural resources and areas that needed to have been covered.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Nyikal.

Hon. (Prof.) Nyikal: Thank you, Hon. Temporary Deputy Speaker. I think this is an extremely important Bill that we have passed today, and which is going to protect our natural resources. As we know, most of the exploration and extraction is often done by foreigners. Therefore, this law is extremely important in ensuring that the welfare of the citizens is protected. I am particularly happy that we did reach an agreement on the Schedule. Whereas I do realize it has given it a more general approach, but that only means that in further deliberations in other Bills that may come or in other agreements, we really have to look very carefully into the details of those agreements to protect the welfare of our citizens.

Thank you, Hon. Temporary Deputy Speaker.

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

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to also contribute to this Bill. The sad story of Africa has always been the paradox that in more cases than one, we seem to be selling our wealth to buy poverty. Africa is one of the places on earth which is very well endowed with natural resources. But those natural resources have been exploited by people who, in truth, do not have the interest of Africans at heart. I think it is important that we are bringing a law which will classify the natural resources whose transaction is subject to ratification. Passing law is one thing; scrutinizing the agreements is another. There is a lot of mischief that goes into agreements, especially those that appertain to natural resources. I would want to believe that when those agreements are brought to this House, whether we are here or not, successive Parliaments will be looking at these Bills. A lot of time will be spent. Normally, the devil is in the details and so, the provisions made will only be those that will ensure the people of Kenya and communities from where those natural resources are being exploited derive maximum benefit from them.

I thank you for the opportunity and I support.

Hon. ole Kenta: Thank you, Hon. Temporary Deputy Speaker. I would also like to join my colleagues in saying that this is a job that needed to be done. In fact, I would like to thank the two Chairs of the Departmental Committee on Energy, Communication and Information and Departmental Committee on Environment and Natural Resources for coming together to realize the dream that the Kenyan people have been looking for.

Parliament has now come into the midst of making agreements, scrutinizing them and ensuring that the Kenyan people benefit from the resources. As my colleagues have just said before me, most of those resources have been exploited in a bad way at the expense of the people and for the benefit of a few. I think it is important that Parliament is involved in most of those transactions because we are the watchdogs of the people. We are the people's representatives and this is something we should do with due diligence and knowing that it is our duty to protect the environment, natural resources and our people.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Thomas Mwachugu.

Hon. Mwachugu: Ahsante sana, Mhe. Naibu Spika wa Muda. Naomba kupongeza wenzangu kwa vile tumeangalia Mswada huu kikamilifu na kwa undani. Mwisho, tukakubaliana ya kuwa kile kipengele kilikuwa kinatupatia shida, tumekisawasisha na kukubaliana mwelekeo ni upi.

Ni muhimu kama Wabunge tukubaliane na tuone kuwa nchi hii na wananchi wanalindwa kulingana na mali ambayo tumejaliwa na Mwenyezi Mungu kuwa nayo. Mara nyingi, inatumiwa na wageni na wananchi wenyewe hawafaidiki. Ukiangalia nchi nyingi za Kiafrika hivi sasa, zina shida kwa sababu ya zile sheria ambazo ziko nazo, haswa kuhusu rasilmali zao. Mara nyingi, wanashikwa mateka na watu ambao wamekuja nchi zao kutafuta mali hiyo.

Nashukuru kuwa kama Wabunge, tumewajibika ya kutosha kuhakikisha kuwa tunaweka sheria kabambe za kuangalia kuwa rasilmali za nchi zinalindwa na kuwa wakenya watafaidika kutokana na rasilmali ambazo Mwenyezi Mungu ametujalia. Naomba wakati ufike wa kutekeleza sheria hizi pia ili mikataba itakayowekwa ifuwatiliwe kwa uangalifu. Lazima tuangalie vile sheria zitawekwa ili mikataba isije ikageuka sheria na ikawa sasa ndiyo inatawala kuliko sheria zile tumeweka. Nchi nyingi zimeingia kwenye shida na ningomba nchi yetu iepuke shida hizo. Tunapitisha sheria hii wakati huu ambao tunaona yale ambao yamepata wenzetu.

Kwa hayo mengi, naomba niunge mkono na nipongeze wenzagu.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members we will not be putting the Question at this time for obvious reasons. We will go the next Order. Hon. Mwachugu, thank you, very much for assisting me with your spectacles.

(Putting of the Question deferred)

BILL

Second Reading

THE ENERGY BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. ole Metito.

Hon. Katoo: Hon. Temporary Deputy Speaker, I beg to move that the Energy Bill, 2015, be now read a Second Time.

In a nutshell, this Bill seeks to consolidate the law relating to energy and to align the legal and regulatory framework of the energy sector to the Constitution of Kenya, 2010. This Bill is quite big and has over 250 clauses. I would wish that Members would go through it the way they have done on the Bill in Order No.9. I will just go through some parts of it.

If you look at Part I, it talks about importation matters with regard to energy, exploitation, generation, transmission, distribution, supply and use of electrical energy. That is from Clauses 1 to 3.

If you go to Part II, the Bill provides for the energy policy and the integrated energy plan. We have heard in the previous Bill about a development plan. It is well explained in Part II, which requires the Cabinet Secretary to publish a national policy within five years of the enactment of this Bill. The energy sector in this country has, of late, ventured into new

exploration. We are exploring natural gas, coal and wind. Therefore, taking five years to publish an energy policy is not a long time. However, it requires all the energy sectors to be fully exploited, especially with the use of technology, and have an integrated energy policy for this country. This also concerns counties and, therefore, a lot of consultations will be done between the two levels of Government. A five-year period is not a long time.

Clauses 4 to 8 deal with the issue of review of the energy policy. There are different energy sources such as downstream petroleum, coal, renewable energy and electricity. Those sources of energy need to be reliable. Therefore, good research has to be done. Clause 7 also imposes an obligation on the Government to provide cheap and affordable energy to all persons in Kenya. You will agree with me that the cost of electricity in this country has always been very high, to the extent of even affecting the cost of doing business in this country. There is a need to look into achievable and reasonable rates that will be affordable to all persons.

We have seen some Executive directives that try to lower electricity tariffs but, in most cases, they have not been adhered to. The energy sector is global. The prices and the cost of energy are controlled globally. At times, the President issues directives on the energy tariffs and then, something in the external environment triggers the rise in energy tariffs which are not realistic. That is the import of Clauses 6, 7 and 8.

With regard to the issue on the high cost of doing business, it is important that we disseminate that information and guidelines to the potential investors in this country, especially those in the energy sector. We also need to come up with good energy infrastructural development in accordance with the law.

Clause 10 of the Bill establishes the energy regulatory authority. It will be managed by the board and chaired by a person appointed by the President. There will also be a director-general appointed by the board. That authority will be responsible for, amongst other things, regulating generation, importation, exploitation, transmission, distribution, supply and use of electrical energy, protection of consumers, investors and others stakeholders' interests. It will also be responsible for certifying energy managers, licensing energy auditors and coordinating development and implementation of a national energy efficiency.

The only concern I have is in Clause 12 which talks about the composition of the board of the authority. Clause 12 (1) (a) states that the chairperson shall be appointed by the President. Clause 12 (2) outlines the qualifications for appointment as the chairperson. Clause 12 (1) also talks about other members of the board such as the Principal Secretary of the responsible ministry, one executive county member responsible for energy and petroleum appointed by the Council of County Governors and a director-general who shall be the secretary of the board. My concern is about the five other members, not being public officers, appointed by the Cabinet Secretary. There needs to be specifications on the fields of expertise of those five members. It is not enough to leave it that way. I hope at the next stage, the Committee will come up with amendments to correct this. It is good to consider this Clause together with Clause 26 which establishes the Energy and Petroleum Tribunal. In Clause 26 (b), other members making up the tribunal include five persons possessing knowledge and experience in petroleum and energy matters. Therefore, in Clause 12 (e) with regard to the five board members that will be appointed by the Cabinet Secretary, there needs to be specified qualifications as to what kind of persons the Cabinet Secretary is going to appoint.

The Bill proposes to have an Energy and Petroleum Tribunal, which shall consist of not more than seven members. It will have the jurisdiction of hearing and determining all matters

referred to and relating to the energy and petroleum sector. This Bill has proposed the establishment of many bodies. Apart from the tribunal and the Energy Regulatory Authority, there is also a proposed Rural Electrification and Renewable Energy Corporation which will also be managed the same way the Energy Regulatory Authority will. This Rural Electrification and Renewable Energy Corporation will be managed by the board of directors and will be responsible for overseeing the implementation of the Rural Electrification Programme. Right now, the Government has embarked on a programme that aims to connect all public schools with electricity. Last week, I was with the Cabinet Secretary (CS) for Water, Hon. Eugene Wamalwa, in my constituency. He also proposed that there will be need to connect all schools with clean drinking water. If a school has clean drinking water as well as electricity, the environment will be conducive for learning. Therefore the Rural Electrification and Renewable Energy Corporation will be in charge of overseeing the implementation of the Rural Electrification Programme and developing and updating the rural electrification master-plans. Right now, many of the social or public amenities in the rural areas such as health centres, schools and trading centres need to have an updated master-plan. You may connect electricity to some of those entities today and after three months, others have come up. Therefore, there is need to update the master-plans for continuity.

We also need to provide technical and other capacity support to county governments. This Bill also proposes the Energy and Petroleum Institute. That is one of the bodies that this Bill is proposing to establish, and it will be managed by a chief officer who will be appointed by the board. The institute shall be responsible for, among other things, implementing the nuclear energy programme since we are now diversifying to green energy, promoting the development of nuclear electricity generation in Kenya, carrying out research and developing and disseminating activities in the energy and petroleum sector.

That institute can complement what is done in our public universities. There are students who are studying physics and majoring in nuclear. With a lot of research, that can be injected to this institute. Alternatively, the institute can complement those who are doing that research and can promote and enhance the production of energy in this country.

Part IV of the Bill provides for renewable energy. Clauses 72 and 74 of the Bill talk about promotion of renewable energy and in this case, we are talking about development and use of renewable energy technologies which include biomass, biodiesel, bio-ethanol, charcoal, fuel-wood, solar, wind, tidal waves, hydropower, biogas and municipal waste . This is to mention but a few of the sources of renewable energy. The Bill explains ways in which renewable energy can be enhanced and explored. On the same clause, there is the formulation of a national strategy for coordinating research in renewable energy. For example, if somebody is doing research on coal which I know is available in Mwingi, we have another one doing research on exploration of natural gas along the Lamu coastal line and somebody else is doing research on exploration of gas along Magadi area or Turkana. If we do not have a strategy that coordinates all these, then we will be doing them in an absurd way. There is need to have a national strategy to coordinate research on renewable energy.

It is also important to provide a framework for efficient and sustainable production, distribution and marketing. This is quite interesting because there is promotion on the use of municipal waste for production of energy. There was one I saw in India which talked about enhancing the local capacity for the manufacture, installation, maintenance and operation of basic renewable technologies such as bio-digesters, solar systems and turbines. I visited several

companies in India on solar system and turbines, and with development of such technologies in our country, we can increase production of renewable energy.

On carbon credits and grassland conservation, which is another source of renewable energy, we can be moving to a greener environment for purposes of using renewable energy. Carbon credits are being experimented in my home area along the Kyulu Hills using the forest and grassland. With those carbon credits, we can get very good sources of renewable energy. It has so many advantages; which include not polluting the air and environment.

Hon. Temporary Deputy Speaker, there is also production and use of gasohol and biodiesel. Clause 74 is quite detailed on how we can come up with those renewable sources of energy. Geothermal is important and Clause 76 of the Bill talks about it. It places un-extracted geothermal resources in the land under the national Government. It allows the Cabinet Secretary (CS) responsible to issue a licence for the extraction of geothermal resources. This is in accordance with Article 71 of the Constitution that we have just talked about in the previous Bill. That makes it very clear.

Clause 90 of the Bill provides for the establishment of a renewable energy feed-in tariff system. This, among other things, will be nice for catalysing the generation of electricity through renewable energy sources and reducing greenhouse gas emissions. That is what I meant when I talked of not polluting the environment - by lessening reliance on non-renewable energy resources. Clause 90 of the Bill has explained that in detail. I invite Members to look into it.

Clause 93 all the way to Clause 95 is about licences and permits. Under Clause 9 of the Bill that we have just concluded, we argued about the point in which an investor is given a licence or a permit, and whether we should get approval from Parliament. I invite Members to look at these clauses because they talk about the licences that need to be undertaken. It provides that a person who seeks to undertake the petroleum business shall acquire a licence, permit or certificate from the licensing authority and requires that the licensing authority keeps the register of all licences and permits granted.

Clause 121 of the Bill provides for the regulation of downstream petroleum. It talks about imposing a duty on every county government to designate or provide a place or places exclusively reserved for the parking of petroleum tankers. That is because of the sensitivity as those are inflammable products. It places the county government with the responsibility of reserving designated parking for petroleum tankers.

Part VI of the Bill provides that there are many actions to be taken on licences and permits. You may be denied or given a licence with a penalty and that a person aggrieved by the action of the authority may appeal to the Energy and Petroleum Tribunal. That tribunal has qualified members. I cannot locate that now but I have read about it. Some of the members of the tribunal are appointed by the Judicial Service Commission (JSC).

On offences and fines, we have had a lot of vandalism of energy products, specifically electricity products. Protection of electricity meters and cables is well explained in Clause 183.

Clause 43 of the Bill explains those offences and fines. What is important to note is that those offences have been categorised as economic crimes. Surely, if you sabotage the energy sector, you are as well sabotaging the economy of this country. Therefore, these offences have been categorised as economic crimes so as to deter and minimise cases of rampant vandalism of critical services in this country.

Hon. Temporary Deputy Speaker, Clauses 195 and 198 talk about the offences, penalties and fines, rights of way, way leaves and the use of land for energy resources and infrastructure. It

is also important to note that should you want to do an energy project and you want to use infrastructure for development like land, you cannot do it without prior consent or permission of the owner of the land. Right now, we have many cases. The Standard Gauge Railway and the Kenya Electricity Transmission Company (KETRACO) have had many stop-overs and delays going through Kiambu, Kajiado and Makeni counties because of the conflict of going through private land. It is well explained in the Bill that you must get permission from the owner of the land prior to using the land. This calls for compensation if it should be found necessary for that project to go through there.

In conclusion, it is an important and detailed Bill as I said in my opening remarks. It also an ordinary Bill and it concerns counties within the meaning of Article 110 of the Constitution and. So, it will require the concurrence of the Senate. I call upon Members to debate and pass it and then we will transmit it to the Senate as the law requires.

With those few remarks, I beg to move and ask the Chairman of Departmental Committee on Energy, Communication and Information, Hon. Jamleck Kamau, to second.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Jamleck Kamau.

Hon. Kamau: Thank you, Hon. Temporary Deputy Speaker. I rise to second the Energy Bill. The Mover has clearly said the intent and purpose of the Bill. I would just deal with a few issues, specifically those that may be of concern to Members.

We sat as a Committee and went through the entire Bill. We also sat with the stakeholders and all the people concerned with this particular Bill. The way the Bill is drafted has some challenges and perhaps Members should pay attention or listen and finally, if possible, get a copy of our Report, so that as we conclude this debate, we can be well informed as the Committee on where to make amendments, which will be brought before the House at the end of the day.

If you look at Clause 4(2) that talks about the National Energy Policy, stakeholders were quite unhappy with it. If I may read it, it provides that within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the National Energy Policy. They wanted a clear message saying that we add policy outlining progress on specific areas and parameters. That was well taken care of given that we sat with officials from the Ministry of Energy and Petroleum and came up with an agreement basically on how we should go forward with that one. The Ministry was hesitant on the same because they said that the report on preparation would outline the progress in all key areas amongst other aspects. The proposal, therefore, would not add any value. I am sure Members will look at this particular clause and maybe at the end of the day, as a Committee, we will see if we will need to make any amendments on it or passé it just the way it is.

Clause 5(4) is important and it deals specifically with the integrated national energy plan. It provides that the Cabinet Secretary shall consolidate the plans contemplated in sub-section (2) and (3) into an integrated national energy plan which shall be reviewed regularly. The stakeholders were of the view that we need to define what “regularly” means because it may mean two or three or even five years. So, they proposed that it should be, at least, once in every three years. When we took this to the Ministry, they were in agreement with that proposal from the stakeholders. Therefore, if Members are also in agreement, we will just bring proposals and move forward with the same thing.

In regard to Clause 8(1), the Cabinet Secretary shall develop a conducive environment for the promotion of investments in energy infrastructure, including formulation of guidelines in

collaboration with relevant county agencies on development of energy projects and to disseminate them among potential investors. They wanted this changed to read that “the Cabinet Secretary shall develop a conducive environment for promotion of all these investments without necessarily going to the projects and dissemination among the potential investors.”

These were some of the issues the Ministry specifically had and they were clear about the proposed Clause 8(2) as there are adequate provisions in Part VIII of the Bill regarding rights of way, way leaves and use of land for energy resources and infrastructure. The Members will go through it as well and see in which way we can work on it. There are quite a number of them. I will look at the most relevant ones because I may not be able to go through the entire document.

There is a specific one that talks about the powers of the Authority as contemplated in Clause 2. The Authority, according to Clause 2, shall have all powers necessary or expedient performance of its function under this Bill. In particular, the Authority shall have power to impose such sanctions and civil fines being not less than Kshs10,000 per violation per day to secure compliance with orders issued under this Bill. On that particular one, there were concerns that when you say not less than Kshs10, 000, it is vague. It is not very clear. When you talk about an industry that deals with a lot of money and recommend a Kshs10, 000 fine, this is nothing to some people. There was contemplation by the stakeholders that they should reword it to include that the Authority shall have all powers under this Bill and in particular, it shall have power to impose such civil fines, but not exceeding Kshs10,000 per violation per day to secure compliance with these orders.

Unfortunately, on this particular one, the Ministry was a bit hesitant and finally we agreed that all these penalties and fines are being imposed against violations which are of a different nature. We decided to come up with a Schedule that defines every violation and its subsequent fines as proposed in the Bill. As a Committee, we will come up with a Schedule which we have discussed with the stakeholders and which will be in an amended form. Members will look at it and we will see what we can do.

There is an issue on the Board of the Authority in Clause 12. The management of the Authority shall vest in the board of directors consisting of five members not being public officers. The private sector wanted representation there.

They were clear that they wanted most representatives in the Board to be from the private sector in Kenya. Again, this is an issue that the Members need to interrogate properly because they must agree and give us some insight on the amendments we can bring.

There is the Energy and Petroleum Institute that is covered from Clause 53. Clause 57(d) says that:-

“not more than five other members, appointed by the Cabinet Secretary, three of whom shall be drawn from the private sector with experience and expertise on energy matters”.

Again, the stakeholders were really concerned. They wanted to be part and parcel of it. However, after lengthy discussions with the Ministry, the Ministry agreed that we should reduce the number of Principal Secretaries on the Board of Directors of the Institute from five to three and then combine Clause 57 (b)(ii) and (iii) for it to read:-

“four other members not being in the public service”.

That will literally be for the private sector without necessarily talking about them. These would be appointed by the Cabinet Secretary, similarly to Clause 12(1)(e).

I will talk on the issue of renewable energy. Clause 73(2) states clearly that:-

“The Cabinet Secretary shall prepare a renewable energy resources inventory and resource map in respect of each renewable energy area and thereafter prepare updates biennially”.

The stakeholders were in agreement with this clause, but they were not comfortable with the updates being biannual. However, after many deliberations, the Ministry agreed to adopt the Kenya Private Sector Alliance (KEPSA) amendments, which will come before the House. I hope the Members will be in agreement with that.

The others were well covered by the Mover of the Bill. I will touch on just two issues that were of concern to the stakeholders. Clause 147(5) states that:-

“The Authority shall, within fifteen days after the receipt of the application, inform the applicant in writing whether the application is complete”.

This is the application that is going to be made to the authority. The stakeholders wanted the authority, within 15 days after receipt of the application, to inform the applicant in writing whether the application is complete and process all complete applications for a licence within 30 days. We are saying that the entire process immediately after application should and must be complete within 45 days.

The Ministry rejected the KEPSA proposal to merge confirmation of completeness and processing of an application within 60 days. They said that they would not agree to that because it is neither practical nor efficient to start processing an application that is not materially complete. In other words, if the application is not complete within 15 days and somebody is notified, there is no way the same can start to be processed. That made some sense to us.

The only new clause which is not in this Bill and which the private sector stakeholders and the Ministry were in agreement with is the provision that after a representation by the Constitutional Implementation Oversight Committee (CIOC) of the National Assembly with regard to the quality supply of Kenya Power and the need to provide compensation where there are damages to any equipment or property. When power outages affect our electrical appliances, there is that provision that compensation should be made only when damages are as a result of negligence by Kenya Power. Therefore, there was a proposal that we address this by inserting a new clause after Clause 169. If Members are in agreement, this clause will read:

“Subject to any agreements which may be entered into between a licensee and a consumer as provided under this Act, whenever the licensee makes default in supplying electrical energy to any consumer:

- (1) the licensee shall be liable to, in respect of each default, a penalty as prescribed by the regulations in that behalf.
- (2) The licensee shall be liable to pay compensation to any person who incurs damage to his/her property, injury or loss of life due to failure, poor quality or irregularity of electricity supply as a result of negligence of avoidable default by the licensee”.

In this case, the licensee is the Kenya Power and the consumer is the person who has a contract with Kenya Power. It goes on further to say that:-

“(3) For avoidance of doubt, the licensee shall not be liable to pay any compensation pursuant to sub-section (2) if the failure, poor quality or irregularity of the supply was caused by third party interference of the licensee electric supply lines”.

That is to say that if somebody in your house decides to interfere with the supply line, then the licensee will not be liable to incur these expenses. That is to say that, eventually, a consumer will have to make sure that the people who are doing the wiring are people who have proper knowledge of what they do.

Sub-clause (4) provides that the Cabinet Secretary shall, upon recommendation by the Authority, make regulation to give effect to the provisions of this section. I do not want to go through the offences, which are quite a number. Unfortunately, they had some issues in the way they were worded. For example, one provides that a person who, unless authorised, opens, breaks or, in any way, interferes with a lock, seal, mark or other fastening, commits an offence. The current penalty says that he or she is liable to not less than Kshs500, 000 or imprisonment for a term not less than six months or both. It can, therefore, be Kshs20 million or Kshs50 million. To us, that was extremely vague because you cannot have a limit on the lower side. Normally, the limit should be on the upper side. The agreement we had with both the Ministry and the stakeholders is that this needs to be revised to bring in a cap of not exceeding Kshs1 million or to a prison term not exceeding two years or both. This will ensure a maximum limit that the courts can put. They are quite a number. Members will familiarise themselves further if they look at the Report from the Committee and they will assist us to make the right decision when the time comes.

Finally, just as the Mover of the Bill said, this Bill concerns county governments according to Article 110 of the Constitution. It is an ordinary Bill.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Committee Chair, did I hear you say that the Committee Report is available?

Hon. Kamau: Yes, the Committee Report was tabled last year in November. So, it is within the precincts of Parliament. It is available at the Table Office.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Nicholas Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute. This is a very important Bill. Although I appreciate the work which is being done by the Departmental Committee on Energy, Communication and Information, the debate on this Bill should have been preceded by a comprehensive report by the Committee. Many people will not find time to go through a Bill with over 252 clauses and five comprehensive Schedules. Is the Report by the Committee available?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): That is what I was clarifying. The Chair said that the Report was tabled last November. So, it is available.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I apologise. I have not seen it. This is an important and timely Bill. I encourage all Members to try as much as possible to go through the Bill in a very careful way. There is a measure called “per capita energy”. It simply measures the amount of energy that is available to every citizen. Our per capita energy in Kenya is still very low. In terms of numbers, it comes below 0.05 kilowatts for every Kenyan. Unfortunately, per capita energy is a direct measure of the development of a nation. In other words, if you take two countries and compare them, the country which enables its citizens to

have more access to energy will necessarily be more developed. That means if you go, for example, to Canada, the United States of America (USA) and South Africa, the amount of energy that is available to every citizen is more than what is available to the people of Kenya. This is quite paradoxical. Our country is tropical. Kenya is the only country that sits equidistantly in both the north and southern hemispheres, covering a whopping 583,000 square kilometres.

If you look at Kenya's land mass on paper, our energy sources from solar alone ought to be much more. It is probably even enough to feed the whole of Africa. If you were to consider that land mass on a given day when the sun is up and rising, every square kilometre of the surface of Kenya potentially can give you 1 kilowatt of power. That is over 100,000 gigawatts of power, which is humongous. It is almost like a nuclear type of energy. Then we have to ask why there is disconnect considering that our total production currently is still well below the expected amount. We have a potential of solar alone of well over 100,000 gigawatts at certain times of the day and yet our total production of electricity right now still stands at below 3 gigawatts or 0.003 per cent of the solar potential alone. If you look at our investments over the first 50 years of our Independence, they were so dismal to an extent that we were able to produce just over 1.5 gigawatts of electricity.

This calls for urgent measures. Our development aspirations will come to nothing if we cannot provide our citizens with adequate, efficient, affordable and reliable energy. Last year, I had a discussion with the Principal Secretary for Energy and Petroleum, my good friend, Eng. Njoroge. There was this aspiration to provide 5,000 megawatts of power in 40 months. I argued with him. I told him that if he achieved that, then in my own small way, I would give him a present. It was not achievable because development is in more ways than one. It is like a symphony in the sense that if the national growth rate is 10 per cent per year, it is not possible to have energy growing at 40 or 50 per cent. Even in Nairobi, the symphony of development simply means that it is not possible to go to an estate where people can afford food, good roads, but they do not have water and electricity. As one sector grows, necessarily for it to have an effect, it has to pull with it another sector. I told my good friend that it is not possible to achieve the target considering our growth rate of about 10 per cent.

It cannot be possible to produce 5,000 megawatts in 40 months when in over 50 years we have just been able to produce slightly over 1,500 megawatts. We must focus on the fact that there is a lot of potential in our country. I have just mentioned solar energy. Our solar potential is enough to feed the whole of Africa with electrical energy. Before you convert the potential into a usable resource, then there are a lot of things that you have to do in between. This is a good Bill in so far as providing a blue print for giving Kenyans affordable, reliable and efficient energy is concerned. I will propose amendments, so that it becomes even more in tandem with the aspirations of our country.

I notice that Clause 7 obligates the Government to provide energy services to all persons in Kenya. This is very good. In the three years that the Jubilee Government has been in power, they have done a commendable job. Almost 70 per cent of our schools, if not more; have electrical power, but that is one bit of the question solved. You will provide power, but of what use is that power if it is not reliable and affordable?

I have just come from Mombasa where I met the Managing Director of Kenya Power Company. I refused to shake his hands because when I go home every weekend, whether it is during the day or the night, the moment it drizzles, my power has to go off. I have called him so

many times. This man cannot even guarantee me power. He has a short message in his phone which I sent to him telling him to disconnect his power, so that I can look for alternative sources of power.

The fact that we are trying to provide infrastructure to reach as many parts of Kenya as possible is commendable. This energy would not account for much if it is not reliable, efficient and affordable. We live in an inverted society. You must have read the other day that 1 per cent of the people in this country own 10 times more wealth than 99 per cent of the people. That means the people that we need to carry with us are not the 1 per cent, to which group we have the privilege to belong to, but the 99 per cent.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Is his time up?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, my time cannot be up that soon.

One Nigerian politician once said that as long as we leave the 99 per cent of the people in our country behind, then they will take us down.

Clause 7 is important because over 65 per cent of our country depends on firewood. What are the implications? It means that we cannot stop deforestation and our forest cover will continue to be affected.

Clause 8 is on investments on energy. We cannot be ashamed to say that as we invest in energy, let that wealth be taken by the people of Kenya. Right now, all the big investments are coming into our country, but those investments are in the hands of non-Kenyans.

I have nothing against non-Kenyans. We live in a global community, but every country that grows must aim to transfer its wealth to its people. I notice that my time is almost up, but lastly, Part IV is on renewable energy. This is what Kenyans should pursue. I know there have been questions as to whether we should pursue nuclear as opposed to renewable energy. It can be possible to do both. The other day, even countries that have been retiring their nuclear resources like Great Britain and China are building nuclear sites.

So, let us embrace an Energy Act which will not only make energy affordable for our people, but make it efficient and reliable. In this Bill, one of the things that we must do is to propose stiff penalties for Kenya Power Company if they cannot guarantee us power for a certain period. If we can have outages for up to several hours damaging equipment and interfering with the lives of our people and we appear powerless to do anything about it, then, as representatives of the people, we shall be failing spectacularly in our duties.

I support, but I will be proposing a plethora of amendments to enrich the Bill.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Okay. I give the Floor to Hon. Joseph Kiuna.

Hon. J.K. Ng'ang'a: Thank you. I support this Bill. From the onset, I congratulate the Jubilee administration for coming up with a pilot project of ensuring that all primary schools in the country have electricity. They seek to embark on the second phase of ensuring that children have access to laptops. Sometimes back, electricity was a preserve of a few individuals in some selected areas. In my constituency, the only person who could access electricity was one working with KPC. It used to stretch for a distance of 10 kilometers to reach another homestead or institution. Nowadays, it is spread across the country.

However, we have many challenges. For any nation to develop, energy is a contributory factor for economic growth. As we embark on improving our economy, we should ensure that our country is industrialized because this is what we rely on for the sustainability of our

economy. We must ensure that electricity is cheap and sufficient. At the moment, many industries in our country would like to compete with other industries from outside Kenya, but the cost of production is very high. We should minimise that cost. I do not see where we went wrong. Kenya is capable of producing enough energy. We have all the resources such as lakes and streams. The provisions of this Bill will ensure that we rectify where we went wrong.

Other than electricity produced from water, we should embark on the production of geothermal energy, which is cheaper. There is plenty of geothermal energy in Nakuru County, particularly in the Menengai Crater and the lower zone of Naivasha. We should put more effort to ensure that enough power is spread across the country.

I do not want to see a situation whereby places such as Lamu or North Eastern are using fuel instead of electricity. We should not do that since we have enough power and no part of the nation should be discriminated against. Where we feel that it is productive, we must ensure that the residents of that area also benefit from it like other Kenyans.

Majority of the people are running away from rural areas to major towns to look for employment. Why can they not be employed in their native lands? Many Kenyans are well educated and have travelled worldwide. They are knowledgeable, but cannot implement some things. I do not know how we shall solve this problem. We are very good policy makers and eloquent in talking. We come up with good master plans and policies, but when it comes to implementing them, they are dropped somewhere and we forget about them. We keep on repeating ourselves year after year. This is not the first time this Bill is being debated in this House.

Why do we waste a lot of time and energy discussing something, but when it is taken to the relevant department for implementation, it is dumped there? We should get people who are committed and ready to serve this nation. Those who are not willing should pave the way for those who are eager to serve. It pains me a lot to see some people in very senior Government positions who instead of discharging their duties diligently, they just sit and everything goes wrong. That is why we have an outcry of corruption.

We should be patriotic Kenyans regardless of party affiliations. We should think as patriotic Kenyans who are here to serve this nation and make it a better place for our future generations who will say that when so and so was in Parliament, such things happened. I want to leave a legacy in this Parliament. If we are not careful, we might leave a legacy of having not come up with good policy to be implemented.

As I wind up, I would also challenge consumers. Let us try to educate the consumers to save the little energy that we have. When it comes to usage of energy from whatever source, there is a lot of wastage. People are paying huge bills for energy which they could have saved and paid less.

Hon. Temporary Deputy Speaker, with those few remarks, I support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Samburu North.

Hon. Lentoimaga: Thank you so much, Hon. Temporary Deputy Speaker, for giving me this opportunity to also support this Bill. First of all, I want to thank the Committee for the good presentation and the good work they have done on this Bill. This Bill has come at the right time because of the work of our Government, which we commend. They have started doing a lot of work in terms of electrifying schools all over the county. A number of times we have visited the offices of the Rural Electrification Authority (REA) and have found them very busy. They even

have deadlines to ensure that all schools are connected to electricity. In areas which are not connected to the national grid, they have provided solar energy. That is a very commendable job. We encourage them to continue, so that by the end of this administration's term, we can reach the threshold.

Secondly, I also realise that in the next financial year they have provided money, so that shopping centres in our areas will be connected to electricity, especially in very dry areas which have solar energy. They will also have power stations for those centres.

My concern is about geothermal power. Some of us from the north where we have vast unexploited and unexplored lands believe that we have the biggest source of geothermal power especially around Suguta Valley in my constituency. Almost half of my constituency has geothermal power that has not been exploited. The Government is moving very slowly in those areas. In my view, this Bill will go a long way in addressing some of the areas of great concern to ensure that we exploit geothermal power. However, this Bill will not address some of the issues like infrastructure in those areas, so that investors can reach the areas where geothermal power is at its peak. So, when the Bill comes to the Committee of the whole House, we need to provide a section that can deal with the provision of infrastructure.

The other bit is the issue of conflict. Geothermal power is a very important asset for this country. Most of these areas have geothermal power apart from Nakuru which Hon. Kiuna has talked about, are not registered land. So, I can see conflict coming up when it comes to exploitation of this resource.

The Bill is so big that we did not have enough time to go through it completely and understand everything. I know there is a tribunal, but we need to focus on conflict resolution between communities and even counties in terms of geothermal exploration and exploitation.

The other issue is about the Cabinet Secretary who has been given a lot of powers in this Bill. The Bill says that the CS may authorise a person in writing to make surveys, investigate and test measurements in search of geothermal resources for purposes of the authorised persons to enter into land specified by the Authority. Of course, in exercising these powers, the CS gets advice from the regulatory authority. The Bill also says that the CS can carry out geological surveys and other things in connection with survey such as investigating, testing and taking measurements. In areas that I have just mentioned, many people have been exploiting the communities. They conduct explorations without permission or even without informing members of the communities.

Article 35 of the Constitution talks about public participation, which is very important. The communities must be sensitised before the Government ventures into any kind of undertaking or activity. We need to look into this matter, so that companies that will be undertaking exploratory activities with the authority of the CS can involve the communities within the areas of operations. Geothermal power and other natural resources could be located in areas where communities value them or consider them holy. They could be areas where the local communities valued them. Therefore, the communities should be consulted. This will help to avoid conflicts. In many instances where exploration has been done, say, geothermal energy, some investors have done so for their own benefit and not for the benefit the community living there. Some of the land is not registered.

Therefore, these people exploit the local communities as they extract minerals and energy resources. We need to come up with ways of ensuring that local communities are fully involved in exploration and extraction of energy resources.

It is not enough to have representation of experts in the authority. I have read that the CS in charge of Energy will be a member. That is not enough. Members of the authority must include people from areas where such natural resources are to be extracted in big quantities. It should not be just a matter of incorporating experts. We need to have people from the local areas incorporated to properly represent the communities. People who are alien to those areas can be deceived. We will end up having the extracted resources benefiting only a few people who pursue personal interests as opposed to pursuing the interests of the communities. We are talking about vast lands. It will be easier if the locals are included in the authority.

The other issue that is of great importance is rural electrification. As I mentioned earlier, the Jubilee Government has done its part especially in schools, but some areas such as Samburu North Constituency, where I come from, have not benefitted much from rural electrification. Since Independence, we have only had one diesel engine in Baragoi. In fact, the engine has only three points of connection to the power source. The rest of the sub-county, 8,000 square Kilometers, has no electricity at all. We are building schools every day. So, rural electrification must be intensified and all the schools that are coming up connected to electricity. Children are going to school everyday and we are building classes such that as we complete ten schools, 20 others are coming up.

We need to fast-track rural electrification and get connected to the national grid which was connected in Maralal in 1982. From that time up to now, even an inch has not been extended to the north. For all that time, it is still in Maralal.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Turkana Central.

Hon. Nakara: Thank you, Hon. Temporary Deputy Speaker for giving an opportunity to contribute to this Bill. First of all, I would like to thank the Committee for coming up with such good ideas. Energy is one of the resources that encourage investments all over the world. If you go to Ethiopia, energy is cheap and available compared to the situation in Kenya and many investors have gone there.

This Bill will encourage investors to come to this country to start industries. One of the things that develop a country is industrialization. Industries create job opportunities, make life easier and enhance the provision of goods to the locals. This improves the standard of living for the people. Like fellow Members have said, energy is what grows an economy. People in the rural areas want to invest, but because of lack of energy, many businesses are closed early in the day.

When we talk about the National Energy Policy, we expect the Government to review this policy after a particular time, may be five or 10 years. The country is growing and the world is also growing into a global village. We need to review the policy as stated by another Member. The situation in Baragoi has not been viewed up to now. A policy should be reviewed to fit into the times.

On the issue of integrated energy plan, we must make sure all the parts of this country receive energy. This is one of the ways in which we can decentralise development and make people in the whole country to feel part and parcel of the Government. I want to congratulate the Jubilee Government for what they have done so far. Many villages have been connected to the grid although in some places fuel is a bit expensive. For example, in Turkana, we use generators and the cost is very high. Some people cannot afford to light their homes. I want to encourage the Government to exploit solar energy which is found in rural areas like Turkana. The Government

can convert it to electricity and this will bring the cost of fuel down and many rural areas will be connected. Through the use of solar energy, schools will not incur expenses of paying huge bills at the end of the month. Some schools cannot afford to pay huge bills incurred through the use of generators.

Hon. Temporary Deputy Speaker, it is the Government's obligation to make sure that the whole country is connected to energy. A Government that wants to development the country makes sure that resources like energy are supplied to all the areas.

It has become routine for every Bill to establish an Authority. We have created many entities which have become a burden to this country and the taxpayers are shouldering this huge burden. We expect the Committee to reduce some of these entities. This Bill has established the Energy Regulatory Authority and the Rural Electrification and Renewable Energy Corporation. All these commissions and entities need money to run, staff and offices to operate. In future, we should reduce these entities to lessen the burden on the taxpayer.

With regard to the issue of licences, it is true that the Cabinet Secretary can give licences to those who want to operate petroleum companies. However, we need to protect small-scale businesses in rural areas. Sometimes the fee for obtaining a licence is very high such that poor people in the rural areas cannot afford it. Although licences are necessary, we need to consider the fact that some businesses are small and others are large. Some people have been in business for many years. Let us protect the small-scale business people, so that they can grow. We need to remove cartels between the Government and the small-scale business people who want to operate within the energy sector.

Another issue that we need to consider is having directors who are not corrupt. Many people want to be appointed to the board of directors because they want a shortcut to get riches. When they become directors, they become suppliers and engage in business with the board. We want to discourage that issue. That is why you see many people rushing to be appointed as directors and yet we know that as a director, you are not paid a salary. You only get allowances. However, people rush for the appointments so that they can use the positions to accumulate wealth or do business within the parastatal. We have cases where boards of directors have conflict of interest. They become the suppliers and do business with that Authority. As a result, we end up failing as a nation because of those kinds of people.

Tullow Oil has trained some people in petroleum courses out of this country, who are now back to the country. I know many students who are back in Turkana after attending petroleum courses in Britain and the United States of America sponsored by Tullow Oil. These young and women are now at home without jobs. Some of them are here in Nairobi running up and down looking for any job. We need to make sure that these people are given priority in such authorities or institutions. These are people who already hold Masters Degree in petroleum courses. We need to encourage people to study such courses, so that the country can become dependent on the locals' initiative. I come from a county where there is oil exploration.

Hon. Temporary Deputy Speaker, 90 per cent of engineers are from outside the country. We pay them huge salaries which they take back to their countries. Our local engineers are not benefiting from their studies. We should protect our local engineers, so that they can earn good money like those expatriates.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Ababu Namwamba.

Hon. Ababu: Thank you, Hon. Temporary Deputy Speaker. I want to support this Bill. Before I do that, I would like to express my disappointment that this is one of those Bills whose significance would have ordinarily perhaps attracted a lot of interest, passion and excitement in the House given the critical nature of energy and the significance of having a law that provides this House with the opportunity to relook at this critical sector. This gives it a fresh impetus and start, as it were, now that the country is entering into a very exciting period with the prospects of production and marketing of oil, expansion of production of energy whether it is geothermal or other sources of energy, the very ambitious agenda of exploiting wind energy and solar power and making sure that we are self-sufficient in energy. I hope that before the debate on this Bill is concluded, one would witness a bit more enthusiasm. This is supposed to be a debating Chamber where we bring the collectivity of dreams, visions and aspirations of Kenyans to bear on legislation.

Energy is critical for the takeoff of any economy. Anybody who has looked at the various economic blueprints this county has put in place including the Vision 2030 will appreciate what a huge disadvantage our economy has been at because of the challenges in the energy sector. Because of the high cost of energy and unreliability of electricity, our economy has not performed optimally. We have witnessed capital flight with a lot of investors relocating their investments from this economy to other economies whose energy production is more reliable and whose cost of energy is a lot more affordable. Many traditional firms that defined the economy of this country like Unilever, Eveready Battery Company and related investments have relocated out of this economy. It becomes difficult for our economy to compete with economies like South Africa, Egypt and our neighbour to the north, Ethiopia, because of a much lower unit cost of energy and the impact of that on production.

Therefore, this is one sector where we have to do everything humanely possible to make sure we make energy in this country reliable, but also affordable and competitive, so that we can offer investors in this economy that competitive edge. But to do that, it means that we have to go an extra mile in doing smart investment both in human and physical capital. That is important in the production of energy.

Last year, while on a private visit to Iceland, I was invited by a group of Kenyan students studying at the University of Iceland under a programme sponsored by the United Nations. I was impressed to meet such a large number of Kenyans studying out there. A large portion of these students, 70 in number, were students' professionals under a special programme sent to Iceland to study geothermal power or geothermal technology. Iceland is one of the top countries in the world in terms of geothermal technology and producing of geothermal power. Indeed, the whole economy of that country heavily depends on geothermal power. It is actually commendable that right now, Iceland provides technical support and is the official technical advisor to KenGen in the energy sector and DGC in production of geothermal power.

I was impressed by this programme where KenGen, GDC and the Ministry of Energy and Petroleum have realised the significance of investing in human capital and providing opportunity for professionals from this economy to train at the very highest level in learning the skills that can help us and equip this economy to deal with the challenge of energy. It is also commendable that we have stepped up our investment in exploitation of geothermal energy.

My experience in Iceland and in other countries that have really invested in this form of energy is that it is green, friendly to the environment and it is renewable. It is energy that you can use again and again, forever. It is very cheap to produce and to transmit. This is one form of

energy where the Government must be encouraged fully to continue investing heavily, so that we can maximise the full potential of geothermal power in this country. Indeed, we have not scratched 30 or 50 per cent of the capacity this country has in geothermal energy.

This is an area where you want to see legislation such as this, Government policy and spending stepped up. We want to see greater investment in other forms of energy and moving away from the traditional hydropower. We want to see greater investments in wind energy harvesting, solar power harvesting and forms of energy that are not only environment friendly, but that are also cheaper and sustainable.

A couple of weeks ago, working with REA Programme, I was working with a team of technicians distributing solar power panels to villages located within the Yala Swamp in Bundalang'i Constituency. I have about five villages located right in the middle of Yala Swamp and it is virtually impossible to get the normal power lines to there. Because of this solar power programme, areas such as these and many other parts of this country are now able to access power. Schools can now access power.

As we plan to get laptops in primary schools and make our schools digital, it is essential that we exploit energy resources, so that our people can access these resources without limitation. All you need is to provide equipment and technology and then you are powered. You will have light and energy. We should support this Bill.

Let me conclude by saying that as we exploit oil resources, we should avoid the curse that has brought trouble after trouble in economies like Nigeria and Angola. The best time to manage this resource is now. Through legislation and policy, we must prepare the country to handle oil wealth.

I support.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we do not have any Member willing to contribute. Therefore, we will adjourn the House. The time being 6.25 p.m., this House stands adjourned until Wednesday, 9th March 2016 at 9.30 a.m.

The House rose at 6.25 p.m.