

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 26th March, 2019

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

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

PRAYER

PAPERS LAID

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today Tuesday, 26th March, 2019.

HALF YEAR COUNTY GOVERNMENTS BUDGET IMPLEMENTATION REVIEW REPORT 2018/2019

Report of the Controller of Budget on Half Year County Governments Budget Implementation Review Report for the year 2018/2019.

REPORTS ON THE FINANCIAL STATEMENTS OF VARIOUS COUNTY FUNDS/PROJECTS

Report of the Auditor-General on the Financial Statement of County Assembly of Nairobi City Mortgage Scheme Fund for the year ended 30th June 2018;

Report of the Auditor-General on the Financial Statements of Nairobi Sanitation Output Based Aid Project IDA CR No.TF14251-KE for the year ended 30th June 2018 – Nairobi Water and Sewerage Company Limited; and finally,

Report of the Auditor-General on the Financial Statements of Kiambu Members' Car Loan and Mortgage Scheme Fund for the Year ended 30th June 2018.

Thank you, Mr. Speaker, Sir.

(Sen. Murkomen laid the documents on the Table)

COMMUNICATION FROM THE CHAIR

CONSULTATIVE FORUM WITH THE CSS FOR INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT, ICT; THE
STATE LAW OFFICE AND THE DEPARTMENT OF JUSTICE

The Speaker (Hon. Lusaka): Hon. Senators, I have the following communication to make.

As you may recall, on Wednesday, 27th February, 2019, I issued a Communication from the Chair regarding a Statement sought by the Senator for Kericho County, Sen. Aaron Cheruiyot, MP, regarding the National Integrated Identity Management System (NIIMS). In the said communication, I invited Senators to a meeting of the Standing Committee on National Security, Defense and Foreign Relations that was scheduled to be held on Thursday, 28th February, 2019. However, as Senators may recall, this meeting did not take place as scheduled.

I have now received information that the Committee is scheduled to hold a meeting with the Cabinet Secretaries (CSs) responsible for the Ministry Interior and Coordination of National Government; and the Ministry of Information, Communication and Technology (ICT); the State Law Office and the Department of Justice on Thursday, 28th March, 2019. It is expected that the CSs will appraise hon. Senators on issues of the NIIMS. The meeting will be held in the Senate Chamber from 8.00 a.m. and will be preceded by breakfast at the Parliament Main Restaurant from 7.00 a.m.

I would like to urge all of you to plan to attend the meeting to deliberate on this very important issue.

I thank you.

(Applause)

Sen. Cherargei: Thank you, Mr. Speaker, Sir, for that communication. My only concern is that the Senate directed that the issuance of *Huduma* numbers should be suspended. I have been made aware that the Ministry and all necessary organs proceeded to ignore the direction of the House. We need guidance on how to proceed after the same CS in charge of the Ministry of Interior and Coordination of National Government, Dr. Fred Matiang'i, ignored the Senate of the Republic of Kenya. It is very important for us to get proper direction so that as we engage him, he should tell us the following-

- (1) Why he did not come;
- (2) Why he ignored the Senate of the Republic of Kenya on the issuance of *Huduma* numbers.

Mr. Speaker, Sir, this is a serious issue such that when we go to public *barazas* everywhere, Kenyans want to know what the *Huduma* number is all about. It is, therefore, important that we get direction so that when the CS comes before us, he can tell us why he ignored the Senate and many other issues.

Thank you.

The Speaker (Hon. Lusaka): Of course, I have said that, that is when you will get an opportunity to ask him all that you have raised here and many other things that you feel like raising with him.

Next order.

STATEMENTS

POLICY ON THE TRANSFER OF FUNCTIONS TO COUNTIES

Sen. (Dr.) Zani: Mr. Speaker, Sir, I stand pursuant to Standing Order 48(1) to seek a statement from the Standing Committee on Devolution and Intergovernmental Relations on the transfer of functions to counties.

Mr. Speaker, Sir, you will recall that in the 11th Parliament, we started off by having a special Committee that, at that time, set out to meet all the Governors in the various counties. In fact, we spread ourselves across the country to ensure that all the functions were transferred. However, we still have three functions that have not been transferred; these are water, roads and library services. As early as 19th February, 2019, the CS for Water and Sanitation is quoted as saying that there seems to be no proper policy to guide the transfer of water as a function to the counties.

Mr. Speaker, Sir, in the statement, the Committee should-

(1) Table a status report on the transfer of functions to counties in the last six years after devolution took effect;

(2) Explain the policies that the Ministry of Devolution and ASAL Areas is using to transfer functions to counties, especially in relations to water; and,

(3) State whether the costing of functions has been completed.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Chairperson of the Committee on Devolution and Intergovernmental Relations, I hope that you have noted the Statement.

Sen. Kinyua: Mr. Speaker, Sir, I have heard the statement and we are going to respond in two weeks' time.

The Speaker (Hon. Lusaka): Sen. (Dr.) Zani, are you okay with that?

Sen. (Dr.) Zani: That is in order, Mr. Speaker, Sir.

May I proceed to the second Statement?

IMPLEMENTATION OF THE 100 PER CENT TRANSITION POLICY TO SECONDARY SCHOOLS/TVET

Sen. (Dr.) Zani: Mr. Speaker, Sir, I stand pursuant to Standing Order 48(1) to seek a statement from the Standing Committee on Education on the status of implementation of the 100 per cent transition policy to secondary schools and to Technical and Vocational Education Training (TVET).

In the statement, the Committee should-

(1) Table a status report on the transition policy, indicating the number of learners per school per county;

(2) State whether there are learners who have not transitioned and explain the circumstances for the failure;

(3) State the cost implications of implementing the 100 per cent transition policy, and explain how the same has been dealt with at the county level; and,

(4) Explain whether the 100 per cent transition policy to secondary schools is sustainable.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Langat: Mr. Speaker, Sir, we shall respond to the Statement in one week's time.

The Speaker (Hon. Lusaka): Thank you; that is good.

Proceed, Sen. Seneta.

Sen. Seneta: Thank you, Mr. Speaker, Sir. Pursuant to Standing Order 48(1), I stand to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries on the impact of devolution on livestock farming---

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Wetangula? Your card does not seem to be working.

Sen. Wetangula: Mr. Speaker, Sir, we were getting ready to supplement questions on the statement by Sen. (Dr.) Zani on the 100 per cent transition policy. I am sorry we were busy consulting, and you went straight to the Chairman without giving us an opportunity. I wonder whether you can allow us to say one or two things, because this is a highly controversial policy, which is being poorly implemented. We need to load on the Statement so that the Chairman can bring more cogent and deeper answers.

The Speaker (Hon. Lusaka): Okay; I will allow you to make your remarks. Proceed, since you are already on the Floor.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. In addition to the request by Sen. (Dr.) Zani, the Chairman of the Committee on Education should tell this House and the country the following-

(1) The policy, as pronounced by the immediate former CS for Education, was that regardless of the results garnered, every child who sat in the Standard Eight exams must go to Form One; or else parents will face penal action. He should, therefore, tell this House and the country whether the requirement for qualification to go to Form One after sitting for the examinations has been suspended or waived.

(2) He should tell this House if the policy of the Government is that every child who goes to Standard Eight and does an exam, regardless of the outcome of the exam, must go to Form One, then what is the need of the Standard Eight exam?

(3) If every child who sits for the Standard Eight exam must go to Form One, then what is the fate of the village polytechnics and other TVET institutions in the country?

(4) If all the children who sit for the exams must transition 100 per cent to Form One, can the Government tell us how many teachers they have provided to secondary schools to accommodate this large number of children; how much fees, in contribution from the Government, is going to be made to schools; and more importantly, how much budgetary allocation has been made to construct physical facilities in terms of classrooms, dormitories and all other learning facilities in the schools.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr: Thank you, Mr. Speaker, Sir. Recently I was invited to speak in a forum in Kilifi that was concerned with the pregnancies we were discussing last year. This is because girls who were found to be pregnant during the examinations are having a crisis. The administration of schools is insisting that they must report to school, but some of them cannot do so because they delivered. In the County of Kilifi alone, for example, there are over 17,000 girls who cannot report to school because of the pregnancies.

Could the Chairman tell us what measures the Ministry has taken to ensure that these places are reserved for these many students all over the country who, for no thought of their own, fell pregnant? Some did their examinations, but they delivered during that period and are unable to join form one.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir, for this opportunity. I would like to support the Statement and look forward to getting the response from the Chairman of the Standing Committee on Education. The truth of the matter is that the 100 per cent transition has failed. This is because the statistics on the ground show that there are so many students who have not reported to secondary school since they were opened. In my county, for example, there are more than 500 students who have not reported because there are not enough places.

Secondly, the thrust of 100 per cent transition was that the students would transit from class eight to form one without paying a single coin. However, when they are asked to pay some fees, then definitely some of them, who cannot afford even uniform, will not transit as envisaged by the Government.

This 100 per cent transition is likely to fail the same way transition to vocational training and institutes of technology has failed. We have many students who have not reported to training institutes because the Government had promised to give them loans and bursaries. They are being sent away after reporting because they do not have money to pay for their fees. A good example is Coast Institute of Technology where I mobilized more the 200 students to report. However, they were sent back home because the Government did not give capitation to the college. These students are being sent away from colleges because there is no money to sustain them.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. I rise to speak on this very important matter. Before this kind of programme is put in place, there must be a wide consultation. However, I would like to raise a few issues regarding parents in some areas who came together many years back, raised money through harambees and built excellent schools. However, these schools were converted into national schools by the Government. It is the parents who gave their own land and built the schools in their areas. There are schools like Ng'andu Girls and Tumutumu Girls in Nyeri. Instead of the school helping the local students, students are being admitted from all over the country.

I ask the Chairman of the Committee to engage with the Ministry and establish the reasons why the Government decided to upgrade some of our local secondary schools that were built by parents to national schools instead of building new ones? These schools were supposed to benefit the local children.

Secondly, Mr. Speaker, Sir, beside this transition of children to form one; there is something else that is very disastrous to the education system. The idea of transferring

teachers in a haphazard manner is not good. I know of a teacher who was transferred very far away from her home area and her husband is a disabled. He was left without anybody to assist him. These transfers need to be relooked because if we are not careful we will mess up secondary education in this country. Education is a very sensitive issue. Transfer of teachers should be done in consultation.

Teachers lay a good foundation for our children. Personally, the idea of 100 percent transition to Form One was a good thing because children finishing at standard eight are too young sometimes even to be engaged in some craftsmanship. However, let us be careful with what is happening in the education system. We can destroy our system, which has worked excellently---

The Speaker (Hon. Lusaka): Okay, Senator! You are already contributing to the Statement.

Sen. (Eng.) Maina: I am supporting and giving good reasons why Sen. (Dr.) Zani thought of seeking this Statement. This is a very serious thing. Some things are more important in this country than others we engage in. The education of our children is paramount and needs to be handled with care. Currently, we are in a crisis and we may end up compromising the standards of education in this country. I, therefore, call upon the Chairman to interrogate this matter deeply.

The Speaker (Hon. Lusaka): As I invite Sen. George Ochillo-Ayacko, please, keep to two minutes and do not debate the Statement because it is not yet time to do so, just ride on briefly.

Sen. Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. First, I want to congratulate my sister, Sen. (Dr.) Zani, for raising this very pertinent matter.

It is a known fact that we do not have enough teachers either in primary or secondary schools. We also do not have enough tutors in Technical and Vocational Education and Training (TVET) institutions. A policy is being whispered around or rumored, if you like or please, that there will be a 100 per cent transition.

Mr. Speaker, Sir, if you come to my county, you will find that there are no trainers and no facilities. It would be important when giving a response to this very weighty issue to assure stakeholders like us, Senators, and other people who mean well for our children that besides the intention to catch up with recruitment of tutors, trainers and other facilities, there are, indeed, resources that have been set aside to ensure that this policy works. This policy if not properly implemented with the requisite resources, it is likely to marginalize other areas that are currently marginalized.

I thank my colleague, Sen. (Dr.) Zani, for raising a very important issue and I am totally in agreement with her.

Sen. Wambua: Thank you, Mr. Speaker, Sir. I also want to join my colleagues to congratulate Sen. (Dr.) Zani for bringing up this Statement.

Mr. Speaker, Sir, when the Government introduced this policy, there was an announcement that education in secondary schools would be tuition fee free. Students are not supposed to pay the money for tuition. The reality on the ground is very different because disbursement to schools for the 100 per cent transition has been very slow and painful.

It will be important for the Chairman on Education Committee to tell us how much money has been disbursed to secondary schools. How much money for tuition has the Government disbursed for the 100 per cent transition?

There was also an announcement that for those admitted to TVETS and Teachers Training Colleges (TTCs); students would also be given access to Higher Education Loans Board (HELB) loans. How much money has been availed to students in TVETs and TTCs from the HELB?

This policy of transition would be a good policy because it will boost enrolment, retention and completion at primary level and reduce wastage. However, if not properly managed, it will lead to a crisis at secondary school level.

The Speaker (Hon. Lusaka): Chair, I hope you have noted all the comments. Is one week still adequate for you to give a comprehensive response?

Sen. (Dr.) Langat: Mr. Speaker, Sir, now that there are so many issues that have been raised, I would like to request for two weeks.

The Speaker (Hon. Lusaka): Two weeks is okay.
Proceed, Sen. Seneta.

IMPACT OF DEVOLUTION ON LIVESTOCK FARMING

Sen. Seneta: Thank you, Mr. Speaker, Sir. Pursuant to Standing Order No.48 (1), I rise to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries on the impact of devolution on livestock farming.

In the Statement the Committee should-

(1) Explain the extent to which agriculture has been devolved, especially in the livestock sector for both beef and dairy farmers.

(2) Explain where the counties have been equipped with the requisite resources, including skilled labour to handle livestock diseases, vaccination and storage of vaccines.

(3) State whether dairy boards have been established in livestock- producing counties to handle dairy production.

(4) Explain the measures put in place to ensure that counties market their dairy products within and outside the country and whether there exists a national policy on dairy farming.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, let me thank Sen. Seneta for requesting this important Statement because the livestock industry in this country is neglected. We talk of agriculture, livestock and fisheries, but very little is being done in terms of what needs to be done in livestock farming.

The Committee, while addressing this Statement, should come out clearly on the policies that are there in terms of livestock farming, both at the national and country level, so that animals are properly catered for in terms of diseases and rearing.

I thank you.

The Speaker (Hon. Lusaka): Sen. (Prof.) Ongeru.

Sen. (Prof.) Ongeru: Thank you, Mr. Speaker, Sir. In getting that Statement about livestock, it is important that the Chair makes a very serious inquiry on the extension

services being offered by the relevant Ministry as regards the various Artificial Insemination (AI) programmes that are being mounted at the county level.

I take pleasure that at one time you were the Permanent Secretary in the Ministry of Livestock. You will, therefore, appreciate that for this industry to move forward, we need these extension services in place and on a timely fashion.

Could the Chair of the Senate Committee on Agriculture, Livestock and Fisheries come up with a robust programme that details what is happening at the county level? This is because most of these farmers have the intention to do good farming, but do not have the support that is necessary for them to bring up their livestock to the level that is required.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. (Dr.) Milgo.

Sen. (Dr.) Milgo: Thank you, Mr. Speaker, Sir. I rise to support this Statement by Sen. Seneta. We used to say that livestock farming is a devolved function. However, there are still a lot of challenges affecting the sector.

The first issue is extension services in the counties. In most cases, in both beef and dairy farming, farmers lack the requisite skills. They also lack quality animal feeds that ensure maximum productivity and profits.

Another challenge in dairy farming has to do with AI services. Normally, AI services determine the quality of productivity. In most cases, there is either shortage of such services in the counties and even if they are available, they are affected by corruption. The type of breed that the farmer ends up getting is not the one they intended to get.

Mr. Speaker, Sir, the other issue is diseases. There is a lack of proper vaccines. As a result, farmers lose their livestock due to diseases. In some cases, farmers lose their livestock due to drought.

This is a very important Statement. As my colleagues have said, we would wish that the responsible Committee will go into details, because livestock farming is a livelihood of three quarters of the pastoralists. Many other people have also taken up this activity, but there are challenges that are affecting it.

Mr. Speaker, Sir, I support.

Sen. Olekina: Thank you, Mr. Speaker, Sir, for giving me an opportunity. I thank Sen. Seneta for bringing this matter. I ask the Chairperson of the Committee on Agriculture, Livestock and Fisheries that will be looking into this matter, to give us a breakdown of what exactly happened.

I remember in the 1980s, this was a sector that was predominantly carried out by the public sector. When I was growing up, we had veterinary officers coming from the Ministry of Agriculture and Livestock. However, nowadays, I see this sector having been mostly privatised, such that even when the veterinary officers, who are working for the Government, offer these extension services to the farmers, end up doing so at a fee.

Mr. Speaker, Sir, this should be broken down for us to understand. I would expect that these veterinary officers would advise the farmers, working with the Kenya Meteorological Department, on the kind of livestock they can have and how to reduce the number of livestock. If that was the case, we would have avoided the situation whereby in this country, every single year particularly in Narok and Kajiado counties, around the

same time in February and March, we have carcasses of animals all over. If research was carried out to find out diseases that kill animals and medicines available in each and every county, we would have stopped this.

In doing that, I request the Chairperson of the Committee to go further to tell us whether county governments that are predominantly occupied by pastoralists have created databases of all the animals and how well equipped the departments of livestock are.

In Narok County, there is a County Executive Committee (CEC) member in charge of Agriculture and Livestock. How are they working closely with the Ministry of Agriculture and Irrigation, in terms of ensuring that farmers get extension services and they are not heavily privatised if that is something that is meant to help the public?

I thank you, Mr. Speaker, Sir.

Sen. (Rev.) Waqo: Mr. Speaker, Sir, I stand to support this Statement on Impact of Devolution on Livestock Farming. As we all know, many of us are beneficiaries of this. The use of livestock and its sub-products like manure is quite important and pastoralists depend on them 100 per cent. Thus, there is need for us to see how devolution has helped and improved their lifestyles. So, we need to see how best to improve the lives of pastoralists and the people who depend on livestock.

As we know, livestock contributes quite a lot to the Gross Domestic Product (GDP) of our country. Unless we take good care of it, we may not achieve that. Like now, there is drought in the northern part of Kenya which has affected the people and we are losing many animals. That means that the issue of livestock insurance is very important, so that pastoralists can be assured of some income even when they lose their animals or products due to natural disasters.

I thank you, Mr. Speaker, Sir.

Sen. Cheruiyot: Mr. Speaker, Sir, this is a very important Statement, especially for those of us who come from communities that practice livestock farming. How agriculture has been managed in many of our counties is extremely disturbing. It is not just extension services that are being offered to livestock farmers who are in a dire situation in almost all the 47 counties.

Now that Sen. Senate has raised this very important issue, could the Chairman of the Committee also care to at least apprise this House on the measures that the Ministry intends to put in place, given the fact that many of our agricultural extension officers in our counties only report to work so that they collect salaries at the end of the month? Many of them are being used but they do not have any facilitation. Could the Ministry propose measures to our counties so that this issue is sorted out?

I thank you, Mr. Speaker, Sir.

Sen. Halake: Mr. Speaker, Sir, I rise to support this important Statement. I would like to focus on the resourcing part of this Statement and link it to the food security which is part of the Big Four agenda.

When we talk about food security, it is taken to mean maize. We should get it right because more than 80 per cent of this country is dry and pastoralism is practiced and not crop farming. We are missing the point with regards to food security in this country. The extent to which livestock farming has been devolved is a very important question

that Sen. Seneta has asked and I think we should focus and look at it from the financing aspect.

I had an occasion to look at the Budget Policy Statement (BPS). What I have realised is that we only look at big agricultural and irrigational inputs but we have not resourced small-scale farming; both in terms of pastoralists and crop farmers. Perhaps, we should demand to see the breakdown of resourcing of small-scale crop farmers and pastoralists as part of the food security agenda.

We have missed the point because we have concentrated on big projects like Galana-Kulalu Irrigation Project which has not worked and cannot work. That is only focusing on commercial farming and not small-scale farming which makes 98 per cent of our agriculture, both in terms of livestock and crop farming.

Mr. Speaker, Sir, I hope that the Committee will look at that issue very seriously. I thank you.

The Speaker (Hon. Lusaka): Chair of the Committee on Agriculture, Livestock and Fisheries, you have heard the contributions and we expect you to provide a report in two weeks.

Hon. Senators, we will defer the remaining statements but they will be given priority tomorrow.

MINING ACTIVITIES IN MIGORI COUNTY

CRIMINAL ACTIVITIES OF THE “SANGWENYA” GANG IN MIGORI COUNTY

STATUS OF EMALI HOLDING GROUND IN KAJIADO COUNTY

(Statements deferred)

Let us go to the next Order.

BILL

Second Reading

THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL (SENATE BILLS NO.34 OF 2018)

(Sen. (Eng.) Mahamud on 20.3.2019)

(Resumption of debate interrupted on 21.3.2019)

The Speaker (Hon. Lusaka): I order that the Division Bell to be rung for five minutes.

(The Division Bell was rung)

The Speaker (Hon. Lusaka): I now direct that the doors be closed and the Bars be drawn.

(The doors were closed and the Bars drawn)

(Question put)

The Speaker (Hon. Lusaka): You can start voting. Those who need assistance to come forward.

(A few Senators approached the Clerks-at-the-Table)

(Voting in progress)

DIVISION

ELECTRONIC VOTING

(Question, that The County Wards (Equitable Development) Bill (Senate Bills No.34 of 2018) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. Kibiru, Kirinyaga County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Onger, Kisii County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Shiyonga, Kakamega County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County and, Sen. Wetangula, Bungoma County.

NOES: Nil.

The Speaker (Hon. Lusaka): Hon. Senators, these are the results of the vote:-

AYES: 30

NOES: Nil.

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 30 votes to nil)

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

The Speaker (Hon. Lusaka): I direct that the Bars be withdrawn.

(The Bars were drawn)

Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Nyamunga) in the Chair]

THE ASSUMPTION OF OFFICE OF THE COUNTY
GOVERNOR BILL (SENATE BILLS No.1 OF 2018)

(Consideration of the National Assembly Amendments)

(There was a technical hitch)

Sen. Cherargei: On a point of order, Madam Temporary Chairperson. Due to technical issues, I am requesting that maybe---

The Temporary Chairperson (Sen. Nyamunga): Hon. Senator, you know very well that you have not been given any permission. Can you just take your seat? We are sorting it out and we are almost done.

Can we have the bell rung for two minutes?

(The Division Bell was rung)

Can the Bars be drawn and doors closed?

(The Bars were drawn and doors closed)

Hon. Senators, the system is now fine. I urge you to take your seats. Hon. Senators, we are now in the Committee of Whole. Kindly take your seats. We are voting on the Assumption of Office of the County Governor Bill (Senate Bills No.1 of 2018).

Clauses 2, 5, 6, 16, 21 and 23

(Question, that the National Assembly amendments to Clauses 2, 5, 6, 16, 21 and 23 be approved put and the Senate proceeded to vote by County Delegations)

Hon. Senators, you can log in and start voting.

DIVISION

ELECTRONIC VOTING

(Question, that the National Assembly amendments to Clauses 5, 6, 16, 21, 23 and Clause 2 of the Bill be approved, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Iman, Garissa County; Sen. Faki, Mombasa County; Sen. (Dr.) Kabaka, Machakos County; Sen. Kibiru, Kirinyaga County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbitio, Trans Nzoia County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Shiyonga, Kakamega County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County and Sen. Wetangula, Bungoma County.

NOES: Nil.

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, the results are as follows:

AYES: 30

NOES: Nil.

ABSTENTIONS: Nil

(Question carried by 30 votes to nil)

The Temporary Chairperson (Sen. Nyamunga): Proceed, Mover.

Sen. Kinyua: Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of the National Assembly amendments to the Assumption of Office of the County Governor Bills (Senate Bills No.1 of 2018) and its approval of the National Assembly Amendments to Clauses 5, 6, 16, 21, 23 and Clause 2.

(Question put and agreed to)

(Applause)

(The House Resumed)

(The Temporary Speaker (Sen. Pareno) in the Chair)

REPORT

THE NATIONAL ASSEMBLY AMENDMENTS TO THE ASSUMPTION OF OFFICE OF THE
COUNTY GOVERNOR BILL (SENATE BILLS NO.1 OF 2018)

The Temporary Speaker (Sen. Pareno): Proceed, Chairperson.

Sen. Nyamunga: Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered the National Assembly Amendments to the Assumption of Office of the County Governor Bill (Senate Bills No.1 of 2018) and its approval of National Assembly Amendments to Clauses 2,5,6,16,21 and 23.

The Temporary Speaker (Sen. Pareno): Proceed, Mover

Sen. Kinyua: Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said Report. I call upon Sen. Seneta to second.

Sen. Seneta: Madam Temporary Speaker, I second.

(Question proposed)

(Question put and agreed to)

(Applause)

Next Order.

COMMITTEE OF THE WHOLE

(Order of the Committee read)

[The Temporary Speaker (Sen. Pareno) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Nyamunga) in the Chair]

THE COUNTY GOVERNMENTS (AMENDMENT) BILL

(SENATE BILLS NO.13 OF 2018)

DIVISION

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The Temporary Chairperson (Sen. Nyamunga): Kindly close the Doors and draw the Bars

(The Doors were closed and the Bars drawn)

Hon. Senators, kindly be orderly.
Let the Division Bell be rung for two minutes.

(The Division Bell was rung)

(Division in progress)

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, anyone who needs assistance to come to the Dispatch Box.

DIVISION

ELECTRONIC VOTING

THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO. 13 OF 2018)

(Question, that Clause 2 be amended as proposed put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa, Sen. (Dr.) Kabaka, Machakos County; Sen. Kibiru, Kirinyaga County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Poghio, West Pokot County; Sen. Seneta, Kajiado County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County and Sen. Wetangula, Bungoma County.

NOES: Nil.

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, the results of the Division are as follows.

AYES: 30

NOES: Nil.

ABSTENTIONS: Nil.

The 'Ayes' have it.

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, start voting. Let the assisted voters come forward.

DIVISION

ELECTRONIC VOTING

(Question, that Clause 2 (as amended), the Title and Clause 1 be part of the Bill put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. Kibiru, Kirinyaga County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Seneta, Kajiado County; Sen. Wambua, Kitui County and Sen. (Rev.) Waqo, Marsabit County.

NOES: Nil.

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, the results of the Division are as follows.

AYES: 29

NOES: Nil.

ABSTENTIONS: Nil.

The 'Ayes' have it.

The Temporary Chairperson (Sen. Nyamunga): Could we have the Mover?

Sen. Kinyua: Madam Temporary Chairperson, I beg to move that the Committee do report to the House its consideration of the County Governments (Amendment) Bill (Senate Bills No. 13 of 2018) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT

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AND THIRD READINGTHE COUNTY GOVERNMENTS (AMENDMENT)
BILL (SENATE BILLS NO. 13 OF 2018)

Sen. Nyamunga: Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered the County Governments (Amendment) Bill (Senate Bills No.13 of 2018) and its approval thereof with amendments.

Sen. Kinyua: Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said Report.

The Temporary Speaker (Sen. Pareno): Seconder.

Sen. Dullo seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Pareno): Mover.

Sen. Kinyua: Madam Temporary Speaker, I beg to move that the County Governments (Amendment) Bill (Senate Bills No. 13 of 2018) be now Read the Third Time.

Sen. Wambua seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Pareno): I now order that the Division Bell be rang for one minute.

(The Division Bell was rung)

The Temporary Speaker (Sen. Pareno): Order, Senators, I now order that the doors be closed and the bars be drawn.

(Doors were closed and the bars drawn)

Kindly proceed to vote. Assisted voters, if any, approach the Table.

The Temporary Speaker (Sen. Pareno): Order, Senators.

(Sen. Kibiru consulted loudly)

Order, Sen. Kibiru!

THIRD READING

DIVISION

ELECTRONIC VOTING

THE COUNTY GOVERNMENTS (AMENDMENT) BILL
(SENATE BILLS NO. 13 OF 2018)

*(Question, that the County Governments
(Amendment) Bill (Senate Bills No. 13 of 2018)
be read a Third Time put, and the Senate proceeded
to vote by County Delegations)*

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. Kibiru, Kirinyaga County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Seneta, Kajiado County; Sen. Wambua, Kitui County and Sen. (Rev.) Waqo, Marsabit County.

NOES: Nil

The Temporary Speaker (Sen. Pareno): Hon. Senators, we now have the results: They are as follows

AYES: 27

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(The question was carried by 27 to Nil)

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

The Temporary Speaker (Sen. Pareno): Hon. Senators, I now order that the doors and the bars be open.

(The bars were undrawn and the doors opened)

Next Order.

Hon. Senators, having consulted with the Mover of that Bill, I defer that matter to another date.

BILL

*Second Reading*THE DETERMINATION OF THE NATURE OF BILLS
(PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)*(Bill deferred)*

Next Order.

Before you proceed, Sen. (Dr.) Zani, kindly take your seat. There is a Communication that I wish to make.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM PARLIAMENT OF SIERRA LEONE

The Temporary Speaker (Sen. Pareno): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of a visiting delegation from the Parliament of Sierra Leone.

I request the four officers to stand when called out so that they may be acknowledged in the Senate tradition.

They are:

- | | | | |
|-----|--------------------|---|--|
| (1) | Mr. Gilbert Nhabay | - | Head of Parliamentary
Research Unit |
| (2) | Mr. Joseph Conteh | - | Head of ICT Department |
| (3) | Ms. Sayo Conteh | - | Research Officer. |
| (4) | Mr. Elijah Ambasa | - | Programme Manager- Westminster
Foundation for Democracy |

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

BILL*Second Reading*THE NATURAL RESOURCES (BENEFIT SHARING)
BILL (SENATE BILLS NO 31 OF 2018)

The Temporary Speaker (Sen. Pareno): Sen (Dr.) Zani, proceed.

Sen. (Dr.) Zani: Madam Temporary Speaker, I beg to move that the Natural Resources (Benefit Sharing Bill (Senate Bills N0. 31 of 2018) be now read a Second Time.

Madam Temporary Speaker, as I move this Bill, let me begin, if you may allow me, to join you in welcoming the delegation from the Parliament of Sierra Leone to the

Senate. This is the Senate of Kenya and we are debating matters concerning counties. Right now, we are moving on to an Order, which is meant to help the counties to generate their own resources through resource initiatives. With devolution, we ended up being a bicameral system; having both the National Assembly and the Senate. We are happy that you are here this afternoon.

Madam Temporary Speaker, like many other Bills that we have debated in the 12th Parliament, this Bill started off in the 11th Parliament and it was discussed. Members were very enthusiastic about this Bill in the Senate and when it went to the National Assembly, it was declared a Money Bill.

Many Senators felt disappointed because we felt that this was a Bill that was contextualized to help the counties, and specifically to help communities especially those who rely on their natural resources. Sometimes, these natural resources are utilized and then no revenue is derived from them.

During the 11th Parliament, the Senate of Kenya set up a committee which visited very many counties just to how they are managing their resources. There was a lot of outrage across the country in the places we went to. I remember we went to Kitui to look at sand harvesting.

The aggrieved communities were very real, focused and vocal about the fact that their natural resources were being exploited, but they do not end up benefiting.

Madam Temporary Speaker, the starting point is that there is no county that does not have natural resources that it can utilise for the benefit of her people. In Turkana County, for example, we have water and oil that was discovered recently. This Bill becomes an anchor for counties as they begin to think about how to exploit their resources. If we do not put mechanisms into place, then we may get to a situation, as has happened in many countries such as Nigeria, where we will have the “oil curse”.

In Kwale, where I come from, we also have the minerals ‘curse.’ We are very rich in terms of minerals. We have titanium and zirconium, but are termed as a poor county. In Mombasa, there is fishery, while there is coal in Kitui. In Uasin Gishu, where we visited, there is fluor spar mining. In Baringo, we have gemstones, while we have gold and forest in Kakamega. In Narok, we have wildlife, and salt in Lake Magadi, which is in Kajiado County. We have gemstones in Taita-Taveta and many other minerals across all the counties. In fact, the impetus is that there is no county that cannot exploit its natural resources, be it forests or fisheries. There is something for every county to exploit.

Madam Temporary Speaker, the inspiration from this Bill comes from the experience from Rwanda, where they have a ceremony called *Kwita Izina*. They have specific areas where the gorillas have become a niche. They look at the natural resources as very beneficial for them. The ceremony is an international event, where people come to that part of Rwanda just to experience how the community values the gorillas. Everybody comes to name a gorilla.

The most important part about that is that as a result of their initiative to conserve their environment and think about how natural resources can benefit them, they have built roads and taken care of the environment. People are excited and that in turn makes them value those natural resources.

Madam Temporary Speaker, during the time we visited various counties, there were some that felt that these natural resources should not be exploited. This is because,

unfortunately, when natural resources are being exploited and utilised, sometimes it comes with dire effects. For example, if it is through mining, we may find that there are poisonous substances that stream down to the river and cause people to have diseases, *et cetera*.

It was important, therefore, to try to bring within a scheme, a Bill that will help and benefit the communities to exploit the natural resources. It will also help them feel part and parcel of these natural resources.

The Bill has three very key components in its various parts. The first is to ensure that there is an overarching body that is in charge of natural resources across the various counties. In the first Bill, that is, The Natural Resources Benefit Sharing Bill, 2014, it had been put as an authority. When the Bill went to the National Assembly, it was termed a money Bill, we suspect maybe partly because of having an authority. In this Bill, 2018, we have changed to a commission, body or organisation that already exists, called the Commission on Revenue Allocation (CRA) that is already in place. We, therefore, do not have to create another institution.

Madam Temporary Speaker, other extremely key institutions that are created are at the county and ward levels specifically, a community benefit sharing organisation and committee to ensure that even where revenue is put into place--- If we look at the Mining Bill that was recently passed, it actually moved forward to make allocations of 70 per cent to the national Government, 20 per cent to county government and 10 per cent to local communities. However, the mechanism to do that is missing.

I have seen various statements coming from the Floor, and I think Sen. Mwaruma is also bringing one. This is where we know a resource is being utilised and money is coming in, but the structure for ensuring that it finally lands to the people in the communities is missing.

Two communities have been created. We have the local community benefit sharing and the county benefit sharing, who coordinate with the CRA and liaise with the revenue collecting body, that is, the Kenya Revenue Authority (KRA), to ensure that at the end of the day, the resources, funds, royalties and anything that comes actually goes to the communities.

Madam Temporary Speaker, when we started conceptualising this Bill, we met with the various stakeholders and participants to consider what royalties are and how exactly we calculate them. To avoid making it complicated, we even do not talk about royalties only, but just benefit sharing. Therefore, whatever is coming in, be it money or in kind, the idea is to encourage the community to gain. When we do that, we are encouraging the community on the other hand to take the matter even more seriously and be able to work across the board.

The second important component is in Clause 8, where the Bill now creates the formula for revenue allocation within the various counties. The allocation is made clear. Now in revenue and benefit sharing, we are talking about a Sovereign Wealth Fund. Many other Bills have gone through without necessarily focusing on the Sovereign Wealth Fund directly.

Since natural resources exist for the current generation and the ones to come, it is very critical to have a fund put aside, that is the royalty fund that will take care of the natural resources and also a future fund for other people who will be born later. This is

because this generation is holding these natural resources on behalf of the generations that will come. It is very critical that, that particular fund is able to control the necessity in terms of the allocation. When moving clause to clause, I will also explain how the other allocations will be done.

Madam Temporary Speaker, last but not least, another very important structure and facet of this Bill is to ensure that at the end of the day, clear offences have been put into place. If we look at the Bill, we find that this provision for penalty is quite strict, going up to almost Kshs5 million or three-years jail term, just to ensure that people benefit across the board.

The Bill has a total of six parts. The first one gives the functions of the CRA in detail. The second gives the collection of the royalties and the fees. It gives specific responsibilities to the KRA to collect the royalties. Clause 8 gives the revenue sharing ration. We then have the Benefit Sharing Agreement, where we have the specific organs that are created, such as the County Benefit Sharing Committee; the functions and approval they have to give. Lastly, we have the Local Community Benefit Sharing Forum and the financial obligations.

We do not want to have a situation where this money gets into a particular kitty and then there is confusion. I was talking to some people recently and they asked me, for example, where the money that should be divided as provided for in other Bills goes to? When the money has been collected by KRA, for example, where do they put it, because before it is divided, it needs to be put in a particular place? The natural resources royalties fund is the organ created for ensuring that the money can go into one place. The last one is the miscellaneous provisions that are very important and clear.

Madam Temporary Speaker, on the specific clauses, Clause 3 gives the specification of the natural resources for this Bill. Just before that, in the definitions 'royalties,' as I mentioned earlier, is given a broader definition.

Clause 5 highlights the functions of the Commission on Revenue Allocation (CRA) which will include promoting value addition to the natural resources from a particular county and how they can be exchanged for better income generation. For example, in Kwale, we have Titanium but people are always complaining. We found out that the same situation is in Uasin Gishu when we went to get facts about Fluorspar. Local people feel that they are not being given jobs and if they are, then they are not managerial jobs.

The work of the CRA in terms of being the overseeing body will be critical. This is because we will have two committees at the county level. These are the County Benefit Sharing Committee and the Local Benefit Sharing Forum, and the two will be coordinated on the ground.

In these committees, we have tried as much as possible to have people who, to a large extent, will be on the ground. The Local Benefit Sharing Committee will be at the ward level where a particular resource is.

The CRA will also facilitate and monitor the implementation of benefit sharing agreement. As much as a formula is provided in terms of apportioning, there has to be people on the ground to monitor exactly what will be received from the natural resources and how they will be divided upwards and downwards.

Clause 6 is under Part III on Collection of Royalties and Fees and that is clearly stipulated.

Clause 8 provides the ratio of sharing revenue. For example, hypothetically if we have 100 per cent of the money in the kitty, 20 per cent will be paid into a Sovereign Wealth Fund established by the national Government. The remaining 80 per cent will be divided at the county level where 60 per cent will go to the national Government and 40 per cent will go to the county governments.

At the county level, we will have another formula where 60 per cent of the revenue will go to the whole county and 40 per cent which will remain within a specific place where the resources are. For example, if you have sand or tree harvesting in a ward in Kakamega, the community around there will be considered.

Another important function of the committees will be to control how the money will be used because we have many funds in the counties. For example, governors are given funds for development and we also have the National Government Constituencies Development Fund (NG-CDF). The idea is to control funds by coming up with projects that communities will agree on such projects communities that shall relate to in terms of money that will come from the royalties. Therefore, it will be upon them to decide what they want to use the money for. For example, they could decide to build a school or a road or whatever they need. They are the ones who will make the decision.

There is also a provision on a resource that bestrides two or more counties. If it is a shared resource like the case of water which originates from Murang'a and comes all the way to Nairobi, then the three committees – in this case the three counties because the water passes through three counties – will form the arbitration committee and determine how to apportion or distribute that resource. The Sovereign Wealth Fund needs to be part and parcel of allocation of resources.

I just want to stress on one thing. In Clause 10(2)(c), there will be five persons elected by the local community where the resource is found. It is from the five persons that we will get a chairperson. Other members will be the CEC member responsible for finance and the chairperson of the committee of the respective county assembly responsible for matters relating to natural resources. Since we want the local community to have a say on development projects from their resources, then the chairperson will be elected from one of the five elected members.

Clause 13(1) provides that there shall be established by each affected local community a Local Benefit Sharing Forum comprising of five persons elected by the residents of the local community. This is necessary so that the local people have a choice of who they want.

When we went to Turkana, people were asked to decide whether security or education is more important. This debate has already been started. Therefore, it is upon the counties to sit and make a decision about what they think is important to them.

In Clause 14 under Part V on Financial Provisions, we shall have the Natural Resources Royalties Fund which shall vest in the CRA.

As stipulated in Clause 15, the discussion of what to incorporate in terms of projects will come from the local communities. Clause 16 provides for penalties.

In Clause 17, existing laws and agreements prescribing the ratio of natural resource sharing will be subject to review by the CRA. We want to have a situation

where if things improve over time, communities should also have increments in terms of the resources. So, this formula will not be cast in stone.

In Clause 18, the Cabinet Secretary shall make regulations for the better carrying out of the provisions of this Act.

Madam Temporary Speaker, this is a Bill to encourage communities to feel that they take care of their resources and benefit from them and it will be part of an initiative that will be adopted by many counties towards own-source revenue. The initiative for own-source revenue was aimed at natural resources and many counties might want to take this up.

This is a Bill that we hope will create harmony within the communities. It will address the way they exploit and utilise their natural resources.

Madam Temporary Speaker, with those remarks, I beg to move and request Sen. Cherargei to second. I thank you.

Sen. Cherargei: Madam Temporary Speaker, first, I would like to welcome you back.

Secondly, I congratulate Sen. (Dr.) Zani for this thoughtful and brilliant Bill. This is a straightforward Bill and she has tried to explain in detail what this Bill is all about.

Essentially, this Bill seeks to ensure that conflicts we witness in the country across many communities do not occur. The recent one was about oil in Turkana where people blocked trucks transporting oil to Mombasa saying that they were not part of the negotiations. They were saying that money should be sent to them through Mpesa. That was because there was no proper legal framework to ensure that they benefit from the resource. It took the Government a lot of time and resources to negotiate with them to make them understand. This Bill is important because we might have oil in Elgeyo-Marakwet County and experience the same situation.

We have also been having issues of Titanium and Fluorspar in Elgeyo-Marakwet County, Gold in Migori County and Chemase in Chemelil which is in Nandi County. When people do not understand, it becomes a problem because they could insist that they need money to be sent to them through Mpesa.

I will talk about a few clauses so that I allow other colleagues time to speak to this Bill.

Clause 5(1) has elaborated the functions of the Commission on Revenue Allocation (CRA). Clause 5(1)(a) states that the Commission shall;-

‘Co-ordinate the preparation of benefit sharing agreements between an affected county and an affected entity;’

In the Mining Act, there is an aspect of Community Development Agreement (CDA) which has not been fully exploited.

This CDA is restrictive because when you have a mining permit, the law does not obligate you to sign a CDA but when you have a mining licence, the law allows you to sign a CDA. When you look at the composition of the CDA in terms of resource sharing through the Bill that was passed the other day, 70 per cent goes to the national Government, 20 per cent goes to the county government and the communities get 10 per cent. This Bill elaborates these issues unlike in the case of the CDA agreement.

The Mining Act gave more power to the exploiter because they were the ones to decide on how the CDA committees were to be composed. With this Bill, we will have a

neutral person draft this agreement. The other day, we said that the counties are only generating 13 to 14 per cent of own source revenue. Own source revenue is critical because most counties have failed to meet their targets.

There is a Petition that I brought to this House, and I want to use it as an example. The Petition was on the Karebe Gold Mine in Chemelil-Chemase, where Nandi Sub-county borders Kisumu.

Madam Temporary Speaker, I know that you are aware of that area because of the many connections that you have there. In the agreement, the owner of the land was left at the mercy of the investor. The investor is exploiting the resources in that place and the owners of the land and the community do not benefit. That has led to conflicts between the investor and the community. Those conflicts might become dangerous for there could be a fight along that area.

It will be good to have somebody who can assist our communities. Most of the people at the village level do not comprehend some of these legal obligations or some of these agreements because they did not go to school and cannot append their signatures. They are just asked to put their thumb on the document.

Clause 5(1)(g) states that CRA shall;-

“Conduct research regarding the exploitation and development of natural resource and benefit sharing in Kenya.”

This is very crucial. You will find some characters walk to the Ministry of Petroleum and Mining and apply for exploration licence, then they masquerade everywhere. They can even lie that they have not found anything after the exploration just for you to see people do funny activities around that area after sometime. Many people in this country have done speculative exploration. They go to the Ministry of Petroleum and Mining and get an exploration licence, then walk around the village doing things that the people, the officers on the ground and the county officers do not understand.

There should be a way of ensuring that we conduct proper research so as to enable us discuss benefit sharing in the communities. We need to understand what the discovery of water aquifer in Turkana means. Do we have a reliable standard? In physics, there is ‘k’ which is a standard. We should have a reference point so as not to rely on people who get an exploration licence. People who live around the Karebe Gold Mine area realised that gold was being mined after so many years and that is why there is a conflict. The investor took advantage of the ignorance of the entire population in that area.

Clause 5(1)(g) states that CRA shall-

“Determine appeals arising out of conflicts regarding the preparation and implementation of benefit sharing agreements.”

There has never been an appropriate or more structured way of resolving conflict in areas where we have natural resources. It does not matter whether it is in an area where they are exploring titanium or oil. The Cabinet Secretary for Petroleum and Mining and many other Government officers tried to resolve the Turkana oil issue but there was no proper structure to ensure that the views of the *wananchi* in Turkana or those in the titanium mining areas, or those in Kitui, Nandi or Migori are heard.

Clause 5(1)(i) states that CRA shall-

“Oversee the establishment of benefit sharing committees and forums.”

It is important that we have an independent person or a neutral person to assist in the formation of these committees. When you look at the CDA, the investors and the county governments have more say than the local population yet Section 53 of the County Government Act has provided a way of establishing a village council. I hope that the Mover of the Bill, Sen. (Dr.) Zani, will look into this for us to integrate it with Section 53 of the County Government Act on the formation of village councils. We can then have representatives from the village council in accordance with Section 53 of the County Governments Act.

Clause 5(1)(o) states that CRA shall-
“Promote local content initiatives.”

It is important for us to ensure that we get value and create opportunities. We are creating opportunities for our people in the counties and we are also creating opportunities for revenue. Some of the challenges that the Kenya Revenue Authority (KRA) is facing is tax evasion and leakages of revenue collection and it is worse when you go to the counties. There is no clear way of how own source revenue can be raised in the counties. That is why counties are giving in 13 to 14 per cent in terms of collection. Therefore, I agree with that.

Clause 7(1) states that-

“The Kenya Revenue Authority shall collect royalties as determined by the commission under section 6 from affected entities and any other payment of royalties from natural resource exploitation undertaken under other written law.”

This is important because we can ensure transparency. We can also ensure that counties do not take advantage--- Can you imagine what would happen if counties that cannot collect *boda boda* levies are given the opportunity to collect royalties? The future 60 per cent for posterity is very important.

Clause 9(1) states that-

“Every affected entity shall enter into a benefit sharing agreement before the exploitation of a natural resource in an affected county.”

This is important because some of these investors are very witty. They can lie to the community that they are still exploring the natural resource and that they will come and engage them at another level regarding the revenue benefit sharing agreement. That has been the problem everywhere because people keep on complaining that they were duped. They are told that the investor would bring the machines to explore, then they will sign the agreement later on. In Karebe Gold Mine, the whole community and the owner of the land has been taken to court because they asked for justice and fairness. The investors should distinguish between Corporate Social Responsibility (CSR) and Community Benefit Sharing, which is not CSR. CBR is a right while CSR is a privilege which depends on the charity of that investor.

Where we come from, tea multinationals companies, for example, in Kericho and Nandi counties normally use Social Corporate Responsibility (CSR) as a stick and carrot for purposes of their own public relations and to improve their image that they are doing something nice for the people. Benefit sharing is a right. Therefore, the Ministry of Petroleum and Mining should follow this law very carefully so that our people are not taken into circles and exploited.

Madam Temporary Speaker, Clause 10 states that-

“Each county shall have a natural resources to which this Act applies shall establish a County Benefit Sharing Committee.

(2) A County Benefit Sharing Committee shall consist of –

(a) the county executive committee member responsible for finance;

(b) the chairperson of the Committee of the respective county assembly responsible for matters relating to natural resources; and,

(c) five persons elected by the local community where the resource is found representing the diversity of the local community.”

Madam Temporary Speaker, I suggest that we amend Section 53 of the County Government Act so that we include village councils. The intention of the Bill is to get people in the lower levels to participate in administrative duties. This is provided for in the law. I wish we could have a person from the Ministry of Petroleum and Mining to become advisors. This is because some of these things are complex. For example, some investors can mislead and confuse the populous or the local *mwananchi* by talking about geology or geospatial engineering. Therefore, it is important to have a person from the Ministry of Petroleum and Mining.

Clause 11(a) states that-

“The functions of each County Benefit Sharing Committee shall be to-

(a) negotiate the terms of a benefit sharing agreement with an affected entity on behalf of the county governments.”

This is very important so that if a natural resource is found, for example, in Kithimani, the registration, mining permit or licence cannot be gotten before consulting the owner of the land. However, now that we have this Bill, it will ensure that we have proper negotiations in a fair way.

Madam Temporary Speaker, this is a straight forward Bill. I also know that my colleagues will want to mention one or two things about it. Therefore, in the interest of time, I call upon them to expeditiously move this Bill so that our communities can benefit from it. I am passionate about natural resources. Therefore, everyone should be granted justice. Let us ensure that we pass this Bill for justice and fairness so that our people can get revenue in the various counties in the Republic.

Madam Temporary Speaker, I second.

(Question proposed)

The Temporary Speaker (Sen. Pareno): My Screen is faulty.

Proceed, Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker for giving me an opportunity to support this very important Bill.

I commend Sen. (Dr.) Zani for coming up with this credible Bill. From the word go, this Bill will be a win-win situation for everyone, for examples, the exploiters, the national Government, county governments and for the locals. This is the direction we should take.

Madam Temporary Speaker, if this Bill is implemented, it will ensure that the local content is utilised and that locals are not exploited. We have a duty, as a Senate, to protect the interests of counties and their governments. So, if we pass this Bill, we will have played our role as the Senate in a very powerful way.

Madam Temporary Speaker, this Bill naturally calls for public participation in the sense that when natural resources are discovered in an area, the locals will have to talk to the county governments and the national Government. Therefore, there will be public participation and dialogue. That is the essence of devolution.

Madam Temporary Speaker, what I like about this Bill is that the benefits that will accrue from the natural resources will cascade all the way to the counties to benefit the locals.

Madam Temporary Speaker, some of the natural resources that are mentioned here are God given and divine, for instance, sunlight. However, some of them are manmade, divine or in between, for example, fisheries.

Madam Temporary Speaker, sometimes locals lack the financial muscles to exploit the financial resources. However, if someone comes with the financial muscle to exploit the financial resources and this benefit does not cascade to the locals, it is unfortunate. This is because the resources are found in the local's land but the moneybags go away with the money. The locals also have their own needs. Therefore, they need the revenue. The fact that natural resources are found in their areas means that they have the capital which is very important, for example, land which is a factor of production. So, they are rich. However, it is unfortunate that resources are found in a particular area but people die poor. It is ironical. Therefore, there is need for this Bill to go through.

Madam Temporary Speaker, I like this Bill because it calls for transparency. There are instances where resources have been found in a certain area but when they are exploited and benefits accrue from them, locals do not benefit at all because of lack of transparency. This also applies in the issue of royalties where, for instance, locals are told that resources were found, exploited but the exploiters made very little or no money from it. Therefore, I support the issue of transparency that is in this Bill. When there is transparency, benefits will cascade to the locals. The natural resource is local in content and this must benefit the locals.

Madam Temporary Speaker, as the Senate, we are mandated to support this Bill because it is not a money Bill. At the end of the day, locals and the county governments come in. Our business as the Senate is to support counties and protect their interests. If there are natural resources in counties – as a Senate – we need to move with speed and ensure that we support the benefits that come from that particular county.

What I also like about this Bill is the composition of the committee. According to this Bill, even the locals will be involved and be part of the committee. About five people will be selected by the locals to sit in the Board. This means that these locals will ensure that they protect the interests of the counties and ensure money remains in the counties.

There are two committees; the local and the county committee. In such a situation, it means that there will be dialogue and that means there will be public participation. The locals will be told: “This is the mineral that was found here, yes, and these are the proceeds from the minerals.” So, the locals will be aware and they will not have any issues. When locals are not aware of what is happening, that is when they have

issues. That is when people will go to the roads to protest and the media and there will be an outcry.

Madam Temporary Speaker, according to this Bill, there will be no outcry because there is a win-win situation. When it comes to the royalties, the Government takes 70 per cent, county government 20 per cent and the local community 10 per cent. This is a very good proposition. However, I also suggest to Sen. (Dr.) Zani that even if this Bill goes through, there is need to find mechanisms of ensuring how the 10 per cent that the locals will get will be distributed. Will it be at family or community level? This is a well thought out idea but let it come out clearly so that the resource sharing issue is done amicably for the purpose and the sake of the citizens of this country.

I support this Bill as it has what it takes to save this nation and ensure that our citizens and locals are not exploited. It should not be a situation of the exploiters and the exploited. We do not want our people in counties to be the exploited. We want them to be the benefactors and the beneficiaries of whatever minerals or resources that come from their counties.

I support this Bill.

The Temporary Speaker (Sen. Pareno): That is very candid contribution. However, Sen. (Dr.) Musuruve always has a way to make the “S” before the “speaker”. She says Madam Temporary “Speaker” instead of Madam Temporary Speaker.

Sen. (Prof.) Ongeri: Thank you, for this opportunity to contribute on a very important Bill. This Bill on the Natural Resource Benefits Sharing Bill of 2018 has come at a very critical period.

I will go straight into the contents of this Bill. Clause 3 has enumerated a number of items or areas that these benefits sharing of resources will be affected. A cross range of them is sunlight, water resources, forest, biodiversity and generic resources, wildlife resources, industrial fishing and wind. I am sorry to say that one area that has been omitted out of this Bill, is the mining resources. You cannot be talking of benefits sharing of resources at the local level without including the varieties of minerals that we have in our country.

For instance, I have in mind the Tabaka soapstone which was in existence since 1885. All I saw as I grew up - I was not even born in that year – but when I came to this world, I have seen that stone exploited left, right and centre and exported to European and many other countries of the world. Within Kenya, exploiters and entrepreneurs – or whatever you call them – have come in and carted away huge stones for their own personal use and benefit. The local community, though they are in a circle, they have not benefited anything out of it. Therefore, I would like that when this Bill becomes law, the one other area we should be looking at is such minerals that are in this region.

The second point is that there is no value addition to some of the minerals and materials that are carted away. Therefore, it is critical that we should create safe and green technologies that will help us to exploit and add value to the existing natural resources that are available in any given county. That way, will be able to maximize on the benefits that will eventually accrue at the national, county and community level.

We have had several – for instance, the Maasai Mara National Reserve which is a very rich resource. I think one way of doing timely resource collection from the tourists and other people who visit the Maasai Mara National Reserve would be to collect that

money in a much more efficient manner. That is why I am persuaded by this approach that the Commission of Revenue Allocation (CRA) will be able to collect that money.

However, that money must be transparently collected. This is because there have been occasions when there have been collusions with these other entities where money just disappears to pockets of individuals without the local community even benefiting. You are then told that the money that was collected went to expenses. That is why it is very critical that when it comes to the question of finances, we should have more than an interest as communities.

Madam Temporary Speaker, I have already given a quiet notice to the Mover, Sen. (Dr.) Zani, that we will have to amend Clause 3 of this Bill to include the minerals that are exploited without due regard to the interests of the community. Many people are dying in the Macalder Mines and the Kakamega gold mines and people are not getting the benefits even within the local communities. All they see is that their land is distorted and mutilated and there is nothing that they get out of it. They can neither plant nor do anything on that piece of land. They are not even getting any benefit accruing from that resource which is being exploited by the entrepreneur.

I like this element in Clause 4 but it must be transparent and inclusive. Even when we talk of the handshake, we are saying that it is transparent and inclusive. Similarly, anything of this nature must be transparent and inclusive. I say so because the king of ugly scenes that we saw in Turkana County on the oil business becomes very oily in itself where you see the placating of vehicles that they cannot move the resource. This was simply because the local communities had not been brought on board. They had just been given a verbal assurance that this will happen and we know how many of those verbal assurances fall aside and people do not benefit from the verbal assurance.

It is, therefore, important that right from the word, go, before and during the mapping or the resource, the local community must be fully informed what is obtaining in that natural environment where people reside. If there is something of value, they must know the quantities of those values right from the word go so that we minimise the frictions that are likely to arise from the community.

This is critical when we are exploiting these resources. For instance, in the Tabaka Industries, which can bring in enormous resources, not only to Kisii County and the communities around Tabaka, South Mugirango and the neighbouring areas, but it will also benefit those who are exploiting that resource from that region. It is this compost that is solid agreement and an arrangement between the national Government, the county government and the local communities that will help to enhance this process.

I get worried when we talk about industrial fishing. When you come within the nautical miles of our fishing rights within the coastal ocean, you see a lot of other fishing frigates coming from all over the world. One such example is that China is able to fish within our waters, add value to it and bring it to us. We end up paying enormous money when we could have exploited that resource at an affordable price. Therefore, it is important that transparency and inclusivity is observed. Revenue maximization and adequacy is important. I have already alluded to this money being collected in a timely version.

On part two on the on the question of functions of the Commission on Revenue Allocation (CRA), I need not say much because it goes into the details of these benefits

of revenue sharing once we have those things. There are also issues of royalties and how to oversee the administration of the funds. That is why it is important that everybody knows what is in that kitty. What has not been said is who audits these funds at the end of the day. How do we get to know that this is really what went to the fund at the end of the day? This is a critical issue that we need to put on board when this Bill is finally at the Committee stage. Those are the areas that the Mover of this Bill should look at.

The collection of royalties and fees is a function of the national Government and we need to see what should happen. I am happy that we are talking about percentages here; but you know that percentages can be very deceptive. You can be told that what we got out of this resource is 20,000 British Pounds when, in effect, they got two billion British Pounds. Who is going to do the assessment of those resources? We should incorporate experts' report to quantify and also qualify the quantities and qualities of those resources.

This is very critical. Otherwise, we will be taken for a ride. We will be told: "You see; why are you worried? After all, the communities are getting 40 per cent of the revenue sharing." Yet, that is based on a value that is unknown to the communities. Somewhere in this Bill, there should be a concept on how these quantities are sorted out; how the value is marked for these quantities and for how many years of exploitation. The elasticity of the exploitation of these resources should also be measured so that you know when they do their annual programmes, the other things will be included in this.

There is always confusion when you see some entrepreneurs or investors who come and say: "We have a Social Corporate Responsibility (CSR) programme; we are going to put a hospital there, a road here and another thing there." That is their responsibility coming out of their profits and it should never be confused with revenue sharing with communities. That should be a separate entity altogether. The CSR should be a responsibility because they have an opportunity to exploit a resource in that area. They are, therefore, obligated. It is a gentlemanly way of saying, "Thank you for allowing me to exploit this resource." Therefore, it is my responsibility to this community to see to it that I deal with certain deficits in that community. It is critical that we appreciate this point that is being captured here.

Please, Sen (Dr.) Zani, at the end of the story, we want to know how to quantify this resource. How do we put a value and a tag on these resources? That way, this sharing of revenue has a deeper meaning, because then we know that our people will richly be able to receive these resources in adequate amounts and that will help us to do the right thing.

Quickly on Clause 10(2c), which states that five persons should be elected by the local community where the resource is found, representing the diversity of the local community. I did not follow you well here. Is this where the Chairperson is going to come from, on that community sharing responsibility? If that is the case, then I support that process. If it is not the case, that the Chairperson will come from elsewhere, then that will create some difficulties. This is because we want to increase the confidence of the local community, that this is a real tangible resource that they are going to share. Therefore, they will know what is happening in that region. As I said earlier, it is an important observation.

Clause 14 is on the national resources royalties that shall be vested in the Commission. I have already talked about the role of the Commission and how these resources, once they have already been put there, who is going to audit them at the end to determine how much went to so and so, and everything else?

Otherwise, I support this Bill in its entirety, because it will add value to how the communities will participate in the revenue sharing. First of all, they will participate in the raising of the revenue through their own natural resources within that community. Secondly, they will also share in the use of that revenue for the improvement of the facilities within that community. Consequently, they will be able to make their living standards much better than before.

With those few remarks, Madam Temporary Speaker, I beg to support this Bill.

The Temporary Speaker (Sen. Pareno): I note that we have quite a number of requests. I, therefore, reduce the time for debate for each Senator to 10 minutes.

Proceed, Sen. Farhiya.

Sen. Farhiya: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this Bill. I also wish to thank Sen. (Dr.) Zani for bringing it, because it is very timely.

Madam Temporary Speaker, I come from the Arid and Semi-Arid Lands (ASALs), which covers about 80 per cent of this country. These areas are underdeveloped in terms of even looking for resources, their exploitation and a lot of other issues. Therefore, as someone from Wajir, which is part of those counties, I appreciate this Bill, which is speaking to the population of where I come from.

Madam Temporary Speaker, this Bill does not only speak to the population of where I come from, but it is timely for the whole country because there are a lot of good issues around it. The function clearly falls under the CRA. The Bill goes ahead and gives clear guidelines on what is required of that Commission. One of them that I like is to coordinate and prepare benefit sharing agreement between an affected county and an affected entity. That is Clause 5(1)(a). I also like Clause 5(1)(e). That does not mean that I do not like the other clauses, but those are the ones that speak out.

Clause 5(1)(e) states that one of the functions of the Commission is to facilitate and monitor of benefits sharing agreement entered into between a county government and affected entity. There is also a legislation that is benefit sharing and resource exploitation. It does not leave at only that, it also oversees the sharing of benefits and ensures proper and timely payments of funds. So, it is very clear in what is required.

Clause 5(1) (k) speaks to my heart in terms of empowerment. This is building capacity of local communities in negotiations for benefit sharing and implementation of related projects.

Although the literacy rates in this country are improving, there many people who are not much educated within our communities, especially where I come from, education is a privilege instead of a right. The fact that people are being reminded of their rights, it speaks to my heart.

There are also clear guidelines in terms of consultation and clear identification of the organisations that are involved, and incentives and benefits to promote conversancy.

Environmental conservation is also another issue that I am sure impacts on all of us in the world, but more so people who live in arid and semi-arid lands where it has now

become like a livelihood issue or an existence issue for those people who live purely on livestock which is now under threat.

It also talks about international market value. So at any given time, people are on top of things in terms of what is the value. Let us say, our coffee or tea, it is said that it is one of the best. However, the way the auction is done, Kenya loses a lot of money from it. It is good that this Bill identifies that as an issue.

The other thing I like about this Bill is Clause 8 (3) which talks about 40 per cent of revenue assigned to county government. Under Clause 8 (1)(b), it says eight per cent of revenue shall be subject to--- it is a bit confusing because one is talking about the other while the other is referring to the other. There is need to look at those two clauses and identify what is the real issue because I am not able to tell.

It further says 40 per cent of that, then it says 60 per cent shall be utilised for the benefit for the entire county. It also says 40 per cent to the county government. So, the entire county and the county government, I do not see that. What is there for the community? That needs to come out clearly in this computation.

There is a bit of confusion on Clause 8(4) talks about intra-counties in terms of negotiation and then it says the Commission on Revenue Allocation (CRA) to determine. These are some of the things that are a bit more contentious. In my view, Alternative Dispute Resolution (ADR) process should set in somewhere in that process and not leaving it to CRA alone. What happens if we do not agree with what CRA is proposing? That needs to come out clearly.

In the benefits sharing agreement, there is a clear agreement that spells out what is in it for me and everybody. It is very clearly stated out in Clause 9 of this Bill. I am very happy about that. Like I said before, it is not that I am not happy about the other clauses. However, these are the ones that stick out in terms of issues that are dear to me.

There is also another issue about diversity. As you are aware, there was a Committee that was looking up on an issue – a public participation on a specific issue; I am not going to name it because if I do people will know which one it is. There were almost seven institutions who nominated one person from each of those institutions and all of them happened to be from one ethnic group. Our question was: Was that representative of Kenya's diversity? I am glad that diversity is addressed from the onset in this Bill.

Clause 5 says the Cabinet Secretaries (CS) shall make regulations for conduct of affairs of the county benefits sharing committee. If you leave it to the CS, those regulations will not come. I am proposing that we include a clause which creates a timeframe within which the CS will bring those regulations. He or she can bring them earlier, but he or she cannot bring later than a certain date that all of us know. He or she must comply with that.

Clause 12(2) talks about depositing of those documents. We know in this country when something happens, documents disappear mysteriously. It is good that there is an extra level where documents are taken care of so that they do not disappear mysteriously the way they do.

Clause 13(6) talks about allowances. It clearly clarifies what kind of allowance it is. In many Bills, people talk about an allowance without specifying what kind of allowance it is. This one clearly identifies.

The process involved in developing this Bill has clear transparency in how it is shared so that at least communities and counties also have their own share of what is due to them.

With those few remarks, I support this Bill.

The Temporary Speaker (Sen. Pareno): Sen. Olekina Ledama, you may proceed.

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to support this Bill by Sen. (Dr.) Zani on the Natural Resources (Benefit Sharing) Bill.

From the onset and I have mentioned this to Sen. (Dr.) Zani, I am a bit confused as to the role of the CRA. Article 216 of the Constitution is very clear on the role of the CRA. It is mostly to recommend the formula to be used to share revenue. However, in this Bill, I note that this Bill now extends the role of the CRA.

As I support the Bill, she may need to look at the functions of the CRA which is set out here. Particularly when you look at Part II Clause 5 (d) which says-

“Oversee the administration of the funds set aside for community projects to be implemented under the benefit sharing agreement.”

We will be violating the Constitution there because it does not give that mandate to the CRA. The mandate given to the CRA is quite clear.

Clause 5(g) also states-

“determine appeals arising out of conflicts regarding the preparation and implementation of benefit sharing agreements.”

That is now giving the CRA the role of administration, administer and overseeing the establishment of benefit sharing committees and forums. Yet again, in my view, that would be going beyond what the Constitution envisions to be the role of the CRA. I would be requesting the Senator to look into amending the function of the CRA as per this Bill.

I keep saying that in this country we do not need a lot of Bills, but to implement what we have already passed in Parliament. Recently, we had the Petroleum Bill (National Assembly Bills No. 48 of 2017) and the Energy Bill (National Assembly Bills No. 50 of 2017) in this House. A quick glance at this Bill shows that there are a lot of crisscrossing issues. There are issues that have been canvassed heavily in the Petroleum Bill (National Assembly Bills No. 48 of 2017) in terms of revenue sharing. I brought a lot of amendments but they did not go through. However, when we come back and start new issues in terms of---

Sen. Malalah: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): Would you like to take some information from Sen. Malalah?

Sen. Olekina: Absolutely, Madam Temporary Speaker.

Sen. Malalah: Thank you, Madam Temporary Speaker. First of all, I want to congratulate my brother, Sen. Olekina, on the role of Commission of Revenue Allocation (CRA) in this Bill. However, I would like to refer him to Article 216 (2) of the Constitution, which states:

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

Madam Temporary Speaker, when we talk about national legislation, this is one of them. Therefore, I think the CRA has got a role to play in the determination and execution of this role. I just wanted to inform my brother, Sen. Olekina, to refer to that Article before he considers making the relevant amendments that he wanted to make.

Sen. Olekina: Madam Temporary Speaker, I have looked at the Bill quite clearly and from my interpretation of the Constitution, I am sure that its framers did not have in mind that they would set up a Commission on Revenue Allocation, which recommends and also administers. That is our point of departure; overseeing the administration of the fund.

As I speak, the CRA does not oversee the administration of the sharable revenue. In fact, as the Senate, we oversee. So, I am happy that my brother raised that concern or informed me, but based on what I can read--- I am not saying that I will bring these amendments, but so that we can be clear, it will be important to let the CRA to be the one that recommends, but not oversee.

Number two, on this Bill, I hope that Sen. (Dr.) Zani can look at issues to do with wildlife conservation. When we are looking at the issues of revenue sharing in terms of natural resources, our environment is very clear. What will suffer mostly are the environment and wild animals. When we get all these resources from our environment and are not considering other institutions--- I have not seen anywhere in this Bill referral to collaboration with either the Kenya Forest Services (KFS) or the Kenya Wildlife Services (KWS). I recommend to Sen. (Dr.) Zani, to consider putting a role for these two institutions.

It will also be important for this Bill to be aligned with the Section 4 of the Wildlife (Conservation and Management) Act. No.47 of 2013 which requires that benefits from wildlife conservation are derived to offset costs and ensure that value and management of wildlife do not decline. So, as she has rightfully limited this revenue share to the issues of sunlight, water resource, forest by diversity and genetic wildlife resources, it would be better is she can look at what the Act on wildlife conservation says in terms of revenue sharing and how those animals can be protected.

I think it would also be important to look at Article 69 (1) (a) of the Constitution in terms of this Bill which states-

“The State shall ensure sustainable exploitation, utilization, management, and conservation of the environment and natural resources, and ensure the equitable sharing of their accruing benefits.”

What I note from the formula that is given here is that it appears as if the central Government is the one that will benefit more than the local people. So, we may want to figure out how we align all these revenue sharing formulas which are out there. There is one on the Local Content Bill (Senate Bills No. 10 of 2018), another one on The Petroleum Bill (National Assembly Bills No. 48 of 2017), which is now an Act of Parliament, and the Energy Act.

It will be important for Sen. (Dr.) Zani to figure out a way that she can align her Bill to the existing Acts of Parliament, so that we avoid having this Bill go to the National Assembly and then people start arguing that the issue of revenue sharing on natural resources has already been dealt with either in the Mining Act, the Petroleum Act or Energy Act.

Madam Temporary Speaker, it will also be very important that when we are looking at anything to do with devolution, particularly in this House, we should always be advocating for our people in the county governments to get more benefits and also find a way for them to protect the environment. If you only care about the exploitation of these natural resources, yes, we will go there and do sand harvesting, but leave those people who live there destitute.

Although I support the Bill, I would like to engage the Senator more on how we can ensure that the communities around where the exploitation is being done benefit. They should not just be left there to deal with the functions and all the benefits go back to the national Government.

Madam Temporary Speaker, with those few remarks, I support.

The Temporary Speaker (Sen. Pareno): Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Speaker. I rise to support this Bill, like I did the last time that Sen. (Dr.) Zani proposed. I commend her for the resilience of the fact that after the Select Committee and coming up with such a good Bill, it never saw the light of the day. For Sen. (Dr.) Zani I think it is just biblical; that the good things shall come to pass.

Madam Temporary Speaker, there is no gainsaying on the question of benefit sharing, I agree with Sen. Olekina. I was actually surprised that when it came to Turkana, Gov. Nanok and a team of Members of Parliament (MPs) trooped to State House to negotiate with the President. What happens when something is found in another county? We want to avoid a situation where a county government negotiates with a President, because the next President may have a change of heart. We do not want that sort of system; it is a bad system.

Madam Temporary Speaker, when we were discussing the amendments to the Energy Bill (National Assembly Bills No. 50 of 2017) and the Petroleum Bill (National Assembly Bills No. 48 of 2017) we could not agree because there were directives that these Bills and many others should go unamended. Sen. (Prof.) Ongeru is right; that we cannot just apportion percentages. This cannot be whimsical and a matter for this Government and then the next one thinks of something else. For example, it must be known that if something is found in Tana River, the benefit to the people of Tana River is 60 per cent. Therefore, I support this Bill in terms of having what would be a framework for all purposes.

What Sen. (Prof.) Sen. Ongeru has said is right. We must include whatever it is, whether it is sunlight, water resources and minerals, so that those resources, whatever they are, can be useful. We say in Makueni County that the buildings in Nairobi have been built by the sand from Makueni.

The whole Standard Gauge Railway (SGR) in Makueni was built by our sand, but did that leave the people of Makueni with anything? The Chinese exploited every possible avenue. I am happy with Kajiado County because they said, "you must pay "X" amount of money," and they agreed. They blocked the roads until the Chinese complied. However, if we had legislation, the Chinese would not have exploited us like they did, by building concrete slippers in a place called Kathekani, Makueni County. They went, carried away the factory and everything else, and left bare land. This is because we have no framework.

Madam Temporary Speaker, one thing interests me here in this Bill. This is called the Sovereign Wealth Fund (SWF). I am going to propose to Sen. (Dr.) Zani and the team that is working on this; that this portion of the SWF, must be looked at in great detail. I will give an example: The three top countries in the world on SWF and as a result of oil deposits are Norway, Kuwait and Abu Dhabi. They are the three top sovereign wealth funds in the world. Out of US\$7.4 trillion, these three countries have over US\$5.4 trillion in terms of SWF. What do they do? They invest part of the oil proceeds into the SWF.

It caters for many things. First, it caters for old people. In terms of an amendment, let us not leave it as it is, here, in Clause 8. Let us make it specific; that you are going to deal with the older people. Imagine Sen. (Dr.) Zani, the money that we are giving to the people – who are above 70 years old – about Kshs2,000 - if we had a SWF out of Turkana, we would possibly give the people who are 70 years – because God has blessed them with that age, with Kshs10,000, or more per person, without even getting into the budget of the country.

Secondly, they deal with the question of the decline in oil. At some point, two years ago, there was a decline in prizes of oil. So, if Kenya is thinking that we are going to make money from Turkana; there would be decline. So, the SWF takes care of that and also managing fiscal policy and prizes. I suggest that we have that amendment and clear policies.

The good news is that we are now talking about people. Every time you wake up, you find the Chinese doing buildings. Every time I see a Chinese building or I see a Chinese in Kenya, I think about borrowing. I think about the debts that these Chinese, who are all over the place – every nook and cranny – that we owe them money.

The SWF can reverse the situation. We can help the Jubilee Government because they have put us in a hole, to get out of it by ensuring that people born in this country do not incur debt. How much money is a Norwegian who is born in that country entitled to under the SWF? It is US\$195,000 when you are born. When you are born in Kenya, you have possibly, Kshs20,000 debt to the Chinese Government. We can reverse the situation. All is not lost.

Therefore, I will work with Sen. (Dr.) Zani to see whether in the proposal of the SWF, that she has well defined, the money that is put in, even if it is 20 per cent, we can save it to help this country in the future. Sunlight, water, wind and everything else is something that can benefit this country. It is such a tragedy when I listen to the Cabinet Secretary (CS) in charge of Energy, Petroleum and Mining, that we have paid Kshs5.2 billion in the Turkana Wind Power Project, yet we have not benefited. In a country like Germany, sometimes they switch off the wind mills. This is because they generate so much electricity that you cannot store it. So, they switch them off.

Madam Temporary Speaker, now that we are complaining about the sun – it has come down with its brothers and sisters; it is extremely hot. If we were utilising the sunlight and power that comes out of natural sunlight, we would be helping this country. However, it is going to pass. There is will be floods because of these rains. In Tana River area, there is famine and earthquakes, yet three months ago, they were having floods. Both are going to waste.

This is the sort of thing that we can use. The people of Taita Taveta are possibly the poorest in this country and yet there are people who I know, who billionaires out of

tanzanite are and other stones that are found at a place called Kishushe. These are beautiful blue stones. However, they are the poorest. The labour laws are the worst. They work under strenuous circumstances. Therefore, this Bill must also take care of the labour; the people who are exploiting for us.

The people in Kakamega, who are doing all sort of things, and Western Kenya looking for gold, are not taken care of. This Bill must accommodate them. However, for purposes of the future of this country, the things that we must do to help this country are those that help the *mwananchi*.

I was in Tanzania and I wondered why Serengeti National Park is doing better than Maasai Game Reserve. Do you want to know the reason? It is because 60 per cent of the revenue from the Serengeti National Park, Kirawira Serena Camp and Ngorongoro Crater goes to the people of Tanzania. This is because the Maasai who live there take care of the parks. They have been allowed to graze outside the park but you cannot step into Serengeti National Park, because the Maasais' are taking care of it. This is because they know that if there is poaching, they lose income.

Therefore, there are no fences. We are spending so much money in this country. We need Kshs156 million in Makueni to stop elephants from getting into Kibwezi and eating all our food. In Tanzania, they do not do that. The Maasais take care of it. However, out of the 85 per cent, and I challenged CS, Najib Balala when he said that five per cent of the Gross Domestic Product (GDP) is contributed by our parks. I asked him, what he gives to the Maasais in Maasai Mara and Narok,, out of that five percent and what they give to the people of Makueni and Taita Taveta, where Tsavo National Park occupies. We do not take any pride in having the largest national park next to us. It does not bother us.

The Temporary Speaker (Sen. Pareno): Senator, one minute for you to conclude. Sorry, two minutes.

Sen. Mutula Kilonzo Jnr.: Madam Temporary Speaker, two weeks ago - that is why this is important - a young man Benedict, a form four student, was shot four times by the Kenya Wildlife Service (KWS) rangers. He was just wandering around the park and they confused him for a poacher. They shot him four times from the back yet when an elephant crosses into Kibwezi and Tana River and destroys everything, we have no recourse.

This Bill is so important that I hope this time round the leadership of the Senate will sit down with the leadership of this country and say, that we need this Bill for purposes of helping our people. It is time to talk about the people of Kenya. This is one Bill.

Thank you and congratulations to Sen. (Dr.) Zani.

The Temporary Speaker (Sen. Pareno): Sen. (Rev.) Waqo, proceed.

Sen.(Rev.) Waqo: Thank you, Madam Temporary Speaker. I stand to support this Bill – the Natural Resources (Benefit Sharing) Bill (Senate Bills No. 31 of 2018). I also congratulate Sen. (Dr.) Zani for considering to bring this Bill to the Senate. This is a Bill that will benefit the entire nation and especially the common *mwananchi*.

Madam Temporary Speaker, as I was going through this Bill, I looked at every area and what I have seen will benefit all of us. The Bill provides a framework of establishing benefit sharing systems. As we know, in our country, by the time we talk of

benefit sharing, already people have organized themselves and this normally brings a lot of conflict. This Bill will put systems in place that will guide all the stakeholders.

Part II Clause 5, under functions of the CRA, the Bill proposes that the CRA shall-

“(d) Oversee the administration of the funds set aside for community projects to be implemented under a benefit sharing agreement.”

As I said, benefit sharing is one of the tricky areas in Kenya where others exploit people. You will even find that even non-locals come, get everything and keep away the local people.

Madam Temporary Speaker, I come from a county where we have some resources. Our area of Marsabit and the Northern part of Kenya has been left behind for many years. Consequently, people in different offices keep on exploiting our people on the ground and also benefit a lot through the natural resources that are there.

Clause 5(g) suggests that the same Commission shall-

“Determine appeals arising out of conflicts regarding the preparation and implementation of benefit sharing agreements.”

That has been my main concern. When I saw that the Bill takes care of that, I said that it will benefit all the stakeholders.

Madam Temporary Speaker, Clause 5(h) says that the CRA shall-

“Advise the national Government on policy and the enactment of legislation relating to benefit sharing in resource exploitation.”

That is the same thing I was referring to, because many have been exploited in the past, yet when we sometimes talk of issues such as wind, my county suffers from that. Two weeks ago, some schools and houses were blown away by the wind and people have suffered. When this happens, nobody remembers them; but when it comes to benefit sharing and taking advantage of what is happening, then others do it very well.

Madam Temporary Speaker, the other responsibility of the CRA in Clause 5(j) is to-

“Ensure the proper and timely payment of funds to counties and local communities as provided under this Act.”

The word “timely” is also another thing that has made me to support the Bill. This is because sometimes when we have the resources and the benefits that need to be shared, the saying, “Justice delayed is justice denied” applies. Most of the time, people suffer and others take time so that they will, at the end of the day, run away with whatever they get.

Madam Temporary Speaker, Clause 8(1)(a), says that-

“Revenue collected under this Act shall be shared as follows-

- (a) Twenty per cent of the revenue collected shall, subject to subsection (2), be paid into a sovereign wealth fund established by the national Government; and,
- (b) Eighty per cent of the revenue collected shall, subject to subsection (3), be shared between the national Government and the respective county governments in the ratio of sixty per cent to the national Government and forty per cent to the county government.”

Whatever I saw under that clause is of great benefit. It is clear that nobody will suffer and everybody will be taken care of.

Madam Temporary Speaker, Clause 8(4) states that-

“Where natural resources bestride two or more counties, the Commission shall determine the ratio of sharing the retained revenue amongst the affected counties in consultation with the affected counties.”

With the Commission making a determination, no county will suffer.

Clause 10(1) and (2) state that-

“(1) Each county that has a natural resource to which this Act applies shall establish a County Benefit Sharing Committee.

(2) A County Benefit Sharing Committee shall consist of—

(a) the county executive committee member responsible for finance;

(b) the chairperson of the committee of the respective county assembly responsible for matters relating to natural resources; and

(c) five persons elected by the local community where the resource is found representing the diversity of the local community.”

I would like to comment on Clause 10(2)(c). We have been talking about diversity but I think the issue of gender should be considered. When you talk about diversity, unless you mention the word “gender”, the women and the youth might be sidelined. In order to take care of the diversity of the local communities, we also need to put the issue of gender into consideration.

Madam Temporary Speaker, I know my time is up. I support this Bill because I know it will benefit the people on the ground and also the entire nation. I thank you.

Sen. Malalah: Madam Temporary Speaker, first of all, I congratulate Sen. (Dr.) Zani for coming up with this noble idea. I want to categorically state that I support this Bill with a primary view that it will benefit the local communities. For a long epoch, we have seen communities which have not benefited from the natural resources in their respective counties.

I support this Bill because of Clause 4 which provides for transparency and inclusivity; revenue maximization and adequacy; efficiency and equity; accountability and participation of the people; rule of law and respect for human rights of the people and sustainable natural resources management.

As we delve into this matter, it is important to have the general principle of being transparent in declaring the right value of the resources. We have witnessed situations where natural resources have been undervalued. In the long run, communities end up not getting the right value for their resources.

Madam Temporary Speaker, the issue of the functions of the CRA is a matter which needs deeper understanding. The role of the CRA is established and elaborated in the Constitution of Kenya and this Bill seeks to give it a further mandate to oversee administration of funds.

We have had an issue of defining the word “oversee”. Does it mean that the CRA will take part in the management of the finances in the respective counties? I think the drafter of this Bill, Sen. (Dr.) Zani, should look find a synonym or an appropriate word that will replace the word “oversee”, so that we do not end up getting confused about the role of the CRA.

Secondly, I support this Bill because Clause 8(1)(a) provides that 20 per cent of the revenue collected shall, subject to subsection (2), be paid into a SWF established by

the national Government. We have had the establishment of sovereign wealth funds in many countries like Norway and we have seen success stories in several countries like Algeria, Ghana, Nigeria and Angola. It is important and incumbent upon the leadership of this country to consider having the right policies to manage the SWF.

When it comes to the policy of the SWF, we have had three competing options. First, we need to strike a balance between saving the revenue accrued from the natural resources to stabilising and developing our economy. Sen. Mutula Kilonzo Jnr. stated that it is important that such monies be used to develop and stimulate our economy. As we formulate policies that are going to execute the SWF, it is important to consider the option of using that money to stabilise and stimulate our economy.

With the SWF, the big question that we need to ask ourselves is: Who is the beneficiary of these resources? Is it the current generation or the future generation? We need to envisage a point in time when these resources will be exhausted. The future generations will ask us pertinent questions. They will ask the reason we did not use those resources to benefit them. If our forefathers had not used the natural resources to our benefit, we would be languishing in abject poverty. Therefore, it is important for us to consider that even as we formulate the policies that will manage the SWF.

Article 69 of the Constitution requires the state to-

‘Ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits.’

That Article cements that it is important for the natural resources and the profits accrued from them to benefit the people of Kenya.

Clause 10 provides for the establishment of a County Benefit Sharing Committee. Clause 10(2) provides that-

“A County Benefit Sharing Committee shall consist of-

(b) The chairperson of the committee of the respective county assembly responsible for matters relating to natural resources”.

When it comes to separation of powers, we need to look into this issue. The elected leaders mandate has been enshrined in the Constitution and the County Government Act as that of oversight, representation and legislation. In this Bill, they will find themselves in such committees where they are even paid allowances. This is something that the Mover can look into for us not to involve the Members of the County Assemblies (MCAs) in such committees.

There is some level of duplication when it comes to Clause 13 which talks of the establishment of the Local Benefit Sharing Forum (LBSF). The mandate of the LBSF is more or less like a representation of the community in the whole organisation but we have members of the community already elected to represent the community in the County Benefit Sharing Forum (CBSF). Therefore, when we allow another forum to oversee this forum, it will be duplication of roles. I wish that the drafter of this Bill will look into ways of having one board that will oversee the implementation of this Bill.

This Bill is timely for us, especially the people of Kakamega County, who have suffered for a long epoch. It is sad that Ikolomani has been rated the poorest constituency in the country yet it possesses gold. When you go to Roasterman in Kakamega, Bushiangala, Isulu, you will find people living in abject poverty yet they have gold

underneath. Therefore, this Bill will ensure that the people who have been endowed with these blessings benefit from their resources.

Madam Temporary Speaker, there are schools in Ikolomani which have no permanent floors. There are jigger invested students walking around villages yet they are the owners of gold. Therefore, it is absurd. I, therefore, congratulate Sen. (Dr.) Zani for coming up with such a noble idea to cushion and protect our people not only in Kakamega but, the entire country.

Madam Temporary Speaker, lastly, on the issue of County Benefit Sharing Committee, we have given that Committee mandate to engage the communities in identifying the right projects for them to undertake. However, I have seen situations in Kakamega whereby exploiters---

(Sen. Malalah microphone went off)

The Temporary Speaker (Sen. Pareno): I add you two minutes for you to conclude.

Sen. Malalah: Thank you, Madam Temporary Speaker. We have seen situations whereby people come to Kakamega County to exploit resources and they get into some funny community development agreements which are not honoured. For example, there is an exploiter who came to Kakamega and promised to construct a dispensary in Roasterman Village. However, up to now, that dispensary is not there. Therefore, the mode in which this Bill provides that such community development agreements will be deposited to the Commission on Revenue Allocation (CRA) is a noble idea which I support. We need to have a binding agreement between the two parties so that moving forward, our communities can benefit.

May God bless Sen. (Dr.) Zani for coming up with this brilliant idea.

Sen. Ochillo-Ayacko: Thank you, Madam Temporary Speaker, for giving me an opportunity to make my remarks regarding this Bill.

I take this opportunity to congratulate Sen. (Dr.) Zani for thinking about Kenyans whom we never think about. More often than not when we talk about natural resources, we think about lining our pockets and what we can get out of them. We do not think about people who have nurtured these resources in respect of--- Maybe God put the resources for their own benefit. Therefore, it is kind and magnanimous for Sen. (Dr.) Zani and her team to have thought of these people and propose to this House to think of a way of ensuring that these people get something out of what God intended them to benefit from.

Natural resources can be a major cause of conflict. In fact, if you look at conflict world over, people fight, maim and kill one another because of resources. In any civilized community where there are no regulations and order as to how to sustainably exploit these resources and share them, there is always conflict, death, plunder, slavery and so many vices that we have had this phrase that natural resources become a curse.

Madam Temporary Speaker, where I come from in Migori County, we have minerals in vast quantities. I am happy that Sen. (Prof.) Ongeru, my neighbour Senator for Kisii County, proposed that we include minerals when it comes to natural resources in

this kind of revenue sharing. In Migori County, we have copper, gold and many resources, including water.

What we might have exploited to exhaustion is wildlife because we ought to be part of Maasai Mara National Reserve but we have over exploited the wildlife there. We no longer have them.

If you go to places like Macalder in Nyatike, Nyatuoro, Minyenya in Rongo, Kuria sub-counties and Masara, you will get vast quantities of minerals. When you quickly look at the quality of life led by our people in those areas, you will be greatly disappointed. You will see, side by side, juxtapose to all these wonderful resources that God gave to these people, abject poverty. You will see mushrooming of slums where there is no water supply and children do not go to school. Day in, day out, you will see conflict.

There are faceless people that we do not know who have come to Migori County and they are fencing parcels of land. Quite a number of them have also been victims of violence because the community is also restless. When you see people fencing land that you think is yours and you have been depending on it, you get there, burn their tractors and do quite a number of things. Burning the tractors is a sign of anger. It is also confirmation and an indication that these communities are concerned that they are not benefiting from their natural resources.

Madam Temporary Speaker, Sen. (Dr.) Zani is in very good order. In very good spirit, she has introduced a Bill. I hope that all of us in this good House, any other House and the Executive, will buy into this suggestion; that we must put in place a way of sharing the revenue that we get from these natural resources.

If you look at this Bill, you will find a few things that we should look at and find a way of dealing with. This Bill talks about giving some responsibility to the CRA. Some of the responsibilities that have been proposed to be assigned to the CRA are in order, particularly when it comes to sharing of revenue. If you look at Article 216 of Constitution that confers that mandate to that Commission, those responsibilities in so far as revenue sharing or allocation are in order.

However, if you quickly look at Clause 5(d) (f), (g), (i), (k), (m), (n), (o) and (p), – in my legal mind – these are activities beyond what the Constitution had designed the CRA to deal with. So, I propose to Sen. (Dr.) Zani to think of another institutional framework that might be put instead of trying to over-expand the mandate of this Commission so that there is an institutional framework to oversee and implement the responsibilities that are required here.

Madam Temporary Speaker, as Sen. (Dr.) Zani thinks about this, it should also be thought of that we have 47 governments. These activities will be county centred. If it is determination of how much revenue is derived from these activities, that body that determines must be found in those counties. If it is enforcing agreements, the enforcing agencies must be found in those counties. So, the framework for implementation and overseeing proposition of responsibilities that are beyond the mandate of CRA should have in mind the kind of constitutional super structure that we have. If we do so, we can have a smooth implementation of what we have here.

This is a good Bill; if the House buys into it and implements it, I am sure the issue of conflict, endemic poverty juxtaposed to immense natural wealth will be a thing of the past.

Madam Temporary Speaker, sovereign wealth is an issue that appreciates the fact that natural resources when exploited get exhausted. It is important to make use of them now, in the foreseeable future and also to keep some resources for future generations so that we do not make ourselves a generation that stole from the generations to come. This is a noble proposition that we should have sovereign wealth that is stored and kept for future generations.

We found some things when we were born, we must leave more things when we leave this earth. That is a good spirit by my dear sister Sen. (Dr.) Zani. I conclude by thanking her for thinking about the poor and people who live near these resources but have never had an opportunity to benefit from them. In an orderly society, we must minimize conflict and think of ourselves, our children and the children of our children.

Thank you Madam Temporary Speaker, I support.

Sen. (Dr.) Milgo: Thank you Madam Temporary Speaker, for giving me this chance to also add my voice.

First of all I wish to thank Sen (Dr.) Zani for coming up with such a very important Bill, more particularly a Bill that speaks to the issue of natural resources.

I wish to support this Bill because of the fact that this is going to provide a framework to enforce the systems that are already in place. While we have Article 69(1)(a) and (h) read together with Article 174(g) states that-

“The State shall ensure that there is sustainable exploitation and utilisation and management of natural resources as well as equitable sharing of resources.”

This means that these Articles need to be operationalised. Through this very important Bill we shall have these two Articles operationalised. In addition to that one, as one Senator said, we have a lot of legislations in our country, but the major challenge is the issue of implementation.

A major challenge that we have been experiencing particularly on issues of natural resources as you saw the other time with the Turkana case and even others that have gone unreported, is the issue of exploiting natural resources from particular communities while the people who should have actually benefited are living in deplorable conditions.

I wish to say right now that this Bill has come at the right time particularly because of the two tiers of government and this will go a long way to bring on board the community where these particular resources are.

I support this Bill because of the fact that it is already assigning a number of people that are going to look into the issue of sharing revenue. I support the fact the Commission on Revenue Allocation (CRA) has been brought on board because this is a Commission that is well versed with issues of revenue allocation. Despite the fact that the CRA already has a lot of work, they are able to bring on board, or in this case to decide on formulas that will assist in terms of assigning what will go to the National Government, the county and the community.

Under Clause 5, I particularly like (a) to (j) where there are a number of issues that have been assigned to this Commission; one very important one is to research on issues regarding the exploitation and development of natural resources and benefit-sharing in Kenya.

For a long time, various types of resources have been exploited but then nobody has brought it to the fore, to know where these natural resources or mineral are. With this Bill, we shall know the type of mineral resources that are being exploited in Kenya, where they are located, what type of natural resources these are because they may be water, sunlight or murram like in my county. The Commission on Revenue Allocation (CRA) will be able to put in place a standard policy that in this case will speak to issues of exploitation as well as sharing of this revenue.

In addition to that, I wish to support this Bill by saying that once it has been passed, issues like building capacity of locals will go a long way to assist the local community. As I am speaking right now, in my county, Bomet County, there is a lot of murram being extracted because there are many tarmac roads being constructed in our county right. But then, what has taken place is something that would really affect anyone who would listen to the stories of the people in those particular areas; particularly people living in Chepalungu sub-county, Kapletundo area, areas around Silibwet, and Ndalat where new tarmac roads are being put in place. What happens is that there is a lot of exploitation and illegal contracts are normally used to lure the community into accepting very little pay without any valuable contribution towards what they are really providing for those particular tarmac roads.

Once we have this Commission on board, they will be able to assist the community in adding value to the resources that we are going to achieve. There are many other cases where we have seen communities providing water, the same water is channeled very far away from the said community and away from that particular community, this water is added value and therefore, the gains do not get to the particular community.

Under Part III, in terms of collection of royalties, the best collector of royalties is the Kenya Revenue Authority (KRA) and this has probably been assigned here. With the KRA brought on board to collect royalties, we may not go wrong because we have seen many royalties being collected but they have never been taken to the right place.

Under Clause 8, revenue collected under this Act shall be shared based on some percentages that have been given. While my colleagues were challenging the percentages, I am sure for the first time we will have some figure to use to share revenue. In the past, natural resources have been extracted without sometimes being sent back to the community. In any case, with this particular percentage, I have the feeling that it is the beginning. Maybe as time goes on, we must streamline.

While the issue of money being paid to the sovereign wealth is very important, I have some reservations here unless we shall be able to put in place a special policy for proper care for these particular funds.

In the past we have had funding like in the case of the National Social Security Fund (NSSF) which was supposed to help people in old age but then that had to---

The Temporary Speaker (Sen. Pareno): Order, Sen. (Dr.) Milgo. You will have a balance of two minutes when the matter comes next in the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, it is now 6.30 p.m.; time to interrupt the business of the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 27th March, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.