

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 26<sup>th</sup> 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

**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.

**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 if 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.